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In The

Supreme Court of the United States

October Term, 1993

ISSIAH ROSS, JR., TABITHA HERRING, JAMES C. HOMER, JOHNNIE LEE PALMS, GERRY PLANT, WILLIAM MORGAN PORTER, VERNON ALEXANDER PUTMAN, GEORGE RUMPH, FRANKLIN ROOSEVELT SCOTT, EDDIE SLAUGHTER, JOHN W. TAYLOR, NANNETTE TYSON and HOSEY J. WHITE, JR.

Petitioners,

v.

BUCKEYE CELLULOSE CORPORATION,

Respondent.

Volume II of II

APPENDIX to Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX: LOWER COURT OPINIONS

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vs.

BUCKEYE CELLULOSE CORP., Defendant

Civ. No. 86-048-ALB/AMER(DF)

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, ALBANY/AMERICUS DIVISION

733 F. Supp. 363

April 2, 1990, Decided

COUNSEL

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JUDGES

Duross Fitzpatrick, United States District Judge.

AUTHOR: FITZPATRICK

OPINION

DUROSS FITZPATRICK, UNITED STATES DISTRICT JUDGE

In an order issued by the court in the above styled case on August 11, 1989, (herein referred to as Buckeye I), the court concluded that defendant's Pay and Progression System was a discriminatory employment practice that had a disparate impact on blacks employed at Buckeye Cellulose Corporation (Buckeye). The court will now supplement Buckeye I with the following individual findings of facts and conclusions of law concerning defendant's liability to the individual plaintiffs arising from their disparate impact claim. To the extent that any of the following findings of fact constitute conclusions of law, they are so adopted.

I. FINDINGS OF FACT

JOHN TAYLOR

John Taylor was hired by Buckeye on September 8, 1980, and initially assigned to work in the purchase chip area. The duties Taylor performed while working in the purchase chip area included unloading trucks and rail cars; weighing rail cars; and switching boxcars and chemical cars between the various units and buildings.

In 1981 Taylor met with Buckeye management to put together his career plan. Taylor requested a career plan in the areas of E & I (electrical and instrumentation), chip storage, chip prep, or waste and water. Taylor received a career plan that had chip unloading-proficient, waste fuel-basic, and electrical-basic 50%. He was placed on a curve two pay schedule. Taylor's career plan would remained unchanged until 1985.

In 1982, Taylor went through the qualification process in the purchase chip and waste fuel areas. Taylor got a fifty percent (50%) proficiency rating in the waste fuel area and a one hundred percent (100%) proficiency rating in the purchase chip area. Five years later, in 1987, Taylor became qualified in the waste fuel

area.

Buckeye's treatment of other technicians at the plant indicates that when assigning skill areas, Buckeye generally took advantage of the experience a prospective employee brought with him or her to the company. Ray Harth, a white technician at Buckeye, is an example of an employee who received credit for his previous work experience. Harth came to Buckeye with ten years of experience as a mechanic and was assigned to the mechanical maintenance area and placed on a curve five pay schedule.

Taylor, on the other hand, was not afforded the opportunity to take advantage of the skills he brought to Buckeye. Relying on his strong background as an electrician, Taylor made numerous requests to cross train or transfer into an area that would allow him to take advantage of his past electrical experience. However, he never had E & I placed in his career plan nor was he ever given the chance to formally cross train in E & I while at Buckeye. Don Kersey, a white employee who worked in the woodyard with Taylor, was allowed to shift over to E & I. At the time Kersey changed positions, Taylor had

over ten years of electrical experience and a state electricians license; Kersey had very little electrical experience and no experience in industrial and commercial electrical work.

An employee who started off at Buckeye in a similar position as Taylor was one Alvin Wellons, a white male. Wellons and Taylor both began in the purchase chip area with purchase chip in their initial career plan. Wellons, who was given the chance to cross train, had maintenance and waste and water skill areas added to his career plan. He was placed on a curve four pay level. Taylor was not allowed to cross train and wound up being placed on a curve two pay level.

Although Buckeye never did make formal arrangements for Taylor to cross train in E & I, the company did place electrical basic 50% in Taylor's career plan and gave him the chance to occasionally work in the electrical area and to assist E & I technicians at various times during shutdowns. Buckeye contends that by giving Taylor these opportunities to pick up training, Taylor suffered no harm by not being able to formally cross train in the E & I area. The court

concludes that the informal cross training is but one example of Buckeye's true assessment of Taylor as a valuable employee who had skills in the E & I area which Buckeye took advantage of without simultaneously reflecting that fact in Taylor's career plan.

On an employee record sheet dated 11/20/80 (def. ex. 99 at 4), Buckeye management personnel Tony Brightman and Charlie Wisekal state that they have reviewed Taylor's career plan and discussed ways that they might take advantage of his past electrical employment experience. They agreed that Taylor should spend time training with the E & I group. Upon being allowed to work in E & I, Taylor was specifically cited for doing a good job in E & I and providing valuable assistance to the team. After making the assessment that Taylor had the skills that would make him a valuable asset to the E & I team and that he should spend time training in E & I, Taylor received a career plan that did not include E & I nor was he ever allowed to formally cross train in E & I. He was given the skill of electrical, but only at a qualification level of 50% basic.

The evidence indicates that Taylor had the ability and the qualifications to work in E & I or at the very least deserved to have the skill added to his career plan as a cross skill. It is claimed by Buckeye that they ceased cross training in E & I, yet other technicians had it in their career plans and Buckeye admits Taylor informally cross trained in E & I. Buckeye appreciated Taylor's electrical experience and profited from it without compensating Taylor to the same extent as other white Buckeye technicians with comparable skills. It was through the use of Buckeye's discriminatory pay and progression system that they were able to do so.

The many talents Taylor had that Buckeye took advantage of do not coincide with Buckeye's placement of Taylor on a level two pay curve. The court has noted above Taylor's valuable electrical experience and Buckeye's use of it. The court also notes that Buckeye thought enough of Taylor to make him a shift team coordinator, although, it did later remove him from the position before shift team coordinator ever appeared in his career plan. Taylor assumed his role as shift team coordinator in 1981, around the same

time one Sonny Ard, a white male technician on a pay curve 5 level, also ascended to the position of shift team coordinator. Buckeye generally assigned the shift team coordinator position to technicians who were on a pay curve of at least three or better and only to exceptional technicians who could lead other team members. During the tenure of Taylor as shift team coordinator and that of his successor, Johnnie Lee Palms, shift team coordinators, other than Taylor and Palms, were the highest paid persons in their skill area.

In Taylor's case, Buckeye's own rating of Taylor's performance lends support to a finding that there was no legitimate business reason for Taylor not to be placed on a higher pay scale than curve two and consequently pay him more money. During the first few years of Taylor's employment at Buckeye, he received the type of appraisals that resulted in other technicians being placed on a pay curve higher than two. Taylor had a nine month appraisal in September of 1980 in which he was assessed as performing slightly above average. (Def. ex. 99 at 37). In August of 1982 Taylor received a performance appraisal

indicating he was doing an outstanding job. (Def. ex. 99 at 31). On that particular appraisal sheet Taylor received an above average rating in every one of the appraisal areas. In February of 1983 Taylor again received an assessment that indicated he was performing his job in an above average manner. (Def. ex. 99 at 30).

The court makes every attempt not to second guess the business decisions of the defendant. However, when defendant's own appraisals, compared to the appraisals of other similarly situated white technicians, indicates that based on the criteria it established, Taylor should have received a more valuable career plan and been placed on a higher curve; the court cannot help but reach the conclusion that Taylor has been treated unfairly.

Taylor has demonstrated that he has extensive electrical experience, which Buckeye does value, and that he had the qualifications and ability to be paid on a pay curve higher than two. On the other hand, Buckeye has not shown that it had a legitimate business reason for not placing Taylor on a higher pay curve. The court concludes that the only logical explanation as to why Taylor was not

allowed to cross train nor given a higher curve rating was because he was a victim of Buckeye's discriminatory Pay and Progression System.

TABITHA HERRING

Tabitha Herring, who was a member of the first hire group, began working at Buckeye on June 9, 1980. Herring started out with Buckeye in the waste and water treatment area. Herring was first trained in the water area which took approximately six months. Around ten months to a year after she had completed water training, Herring started her waste area treatment training. At her first qualification board meeting in 1982, Herring received a 50% proficiency rating in water and a 25% proficiency rating in waste. The actual qualification process that Herring went through amounted to her being asked a number of questions for a period that lasted approximately one hour and twenty minutes.

In 1984 Herring took another qualification test in which she received a 100% proficiency in water and a 75% proficiency in waste. Herring failed to get a 100% rating in waste despite having

worked in the area for four years without any incidents concerning environmental or turbidity problems. After each of Herring's qualification tests she was not told about any errors she made, no one went over any of her answers with her, and nobody explained to her why she had qualified at the rate and level she was assigned. Herring did not get another opportunity to take a qualification exam until 1987.

Although Herring did not officially cross train in mechanical maintenance, around the beginning of 1982, she took all the required courses in mechanical maintenance and passed every one of them. The classes she passed had to be successfully completed before a technician would be allowed to cross train in mechanical maintenance. Before being allowed to formally cross train however, Herring was informed that she would need to qualify 100% proficient in both waste and water before she could go on to maintenance. In 1987, Herring qualified as 100% proficient in both areas.

Unlike Herring, there were persons, both black and white, in the waste and water area who were permitted to formally

cross train before they got 100% proficient in both areas.

Only two other waste and water treatment technicians besides Herring had mechanical maintenance in their career plans; and of those two only Charlie Kare, a white male, was allowed to cross train while the other two individuals, Herring and Harold Hankerson, both black, never got the opportunity to cross train.

Herring argues that she was injured by defendant's discriminatory Pay and Progression System because she should have been paid a higher wage. According to Herring, one of the ways she was injured by the System was the unjustified removal of mechanical maintenance from her career plan.

Herring was originally placed on a curve three and given a career plan that included mechanical maintenance, which had one of the highest point values offered. In December of 1982, Herring had mechanical maintenance removed from her career plan which caused her to drop from a curve three pay level to a curve two. Defendant did not replace mechanical maintenance in Herring's career plan with

a skill of similar value.

Defendant produced a great deal of job performance evidence in hopes of demonstrating that it had a legitimate business reason for removing mechanical maintenance from Herring's career plan and placing her on pay level two. Much of that evidence was not considered because the court found it to be after the fact justification which did not affect defendant's decision to remove mechanical maintenance from Herring's plan and to place her on pay curve two. Defendant does concede that a change in the Pay and Progression System in 1982 was partially responsible for removing maintenance from technicians' career plans. It goes on to argue, however, that the removal of mechanical maintenance from Herring's plan was predicated on her slow progress in technical growth in her primary areas and lack of contribution. The court heard conflicting testimony concerning those allegations and finds that Herring's technical ability and contributions were no different than other similarly situated technicians who did not likewise have skills removed from their plans.

Another asserted reason for the

removal of mechanical maintenance from Herring's plan was defendant's assessment that Herring did not possess nor develop the technical skills necessary to adequately perform in the mechanical maintenance skill area. The court notes, however, that Herring took and passed all the courses in mechanical maintenance a technician was required to take and pass before being allowed to cross train in mechanical maintenance. Herring demonstrated that she has the ability and qualifications to train in mechanical maintenance.

The court is not convinced by the defendant's assertions that it had a legitimate business reason for removing mechanical maintenance from Herring's plan. Rather, the court finds that it was the effects of defendant's discriminatory Pay and Progression System that caused the removal and Herring's subsequent reduction in pay.

JOHNNIE LEE PALMS

Buckeye hired Palms on September 8, 1980, as a member of the last hire group and assigned him to work in the woodyard. During his orientation, Palms expressed a

preference to work in the woodyard unit. He was given an initial career plan in 1981 that included the skill areas of longwood, shortwood, and waste fuel. Palms began working primarily in the shortwood area but later requested a transfer from the shortwood area to waste and water treatment, which he felt was more in line with his educational and work experience. When Palms found out he could not transfer to waste and water because there were no openings in that area at the time, he requested the cross skill of mobile maintenance.

Palms never formally transferred from the shortwood area. However, he did get the chance to work in the waste and water treatment area. Palms was introduced to the waste and water treatment area in the latter part of 1981 where he picked up some training in waste treatment. He first went down to the waste and water treatment area for his cross skill training during the first quarter of 1984 before his 1984 qualification examination.

Palms began training in water treatment in February of 1986 and finished the training in January of 1988 when he was declared proficient in the area. On

his proficiency examination in 1988, Palms was assessed as 100% proficient in waste treatment and 100% proficient in water treatment. Before Palms received his proficiency, he was doing roughly the same job as technicians who were already proficient, such as white technicians Willard Parker, A.J. Niette, Lynn Barry, Jerry Barry, and a black technician named Tommy McCuller, who were all being paid more money than Palms.

A review of Palms' initial career plan shows that it called for him to become proficient in longwood and shortwood and to become basic in waste fuel and basic in waste treatment. Approximately a month after he received his career plan, Palms had shift team coordinator added to his career plan in October of 1981. The opening was created when John Taylor was removed from the position. Palms duties as shift team coordinator included: bringing the team together to initiate team meetings; lead discussions concerning performance results and maintenance problems; deciding on run strategies; and reporting to management the results of the team meeting and any other factors that had a possible impact on the operation of the woodyard.

As a shift team coordinator, in terms of the way Buckeye rated a technicians skills, Palms had a career plan equal to that of Sonny Ard and Joseph Willard Parker; and a higher rated plan than Alvin Wellons. However, Ard, Parker, and Wellons, all white technicians at Buckeye, were paid a higher salary than Palms. During the tenure of Palms as shift team coordinator and that of his predecessor, John Taylor, shift team coordinators, other than Palms and Taylor, were the highest paid persons in their skill area. Based on the evidence presented, the court concludes that there is no legitimate business reason that explains why Palms was not compensated similarly to the other shift team coordinators.

Buckeye clearly considered the shift team coordinator one of its top positions for technicians, evidenced by the fact that the position carried one of the highest point totals given for a support skill. The court concludes that Palms failure to receive a salary equal to that of the other shift team coordinators, Ard, Parker, and Wellons, can be attributed to defendant's discriminatory

Pay and Progression System which arbitrarily doled out career skills and allowed Buckeye management to have Palms perform on the same skill level as other similarly situated white technicians, but pay Palms less for doing it.

Palms asserts that there are other instances of his suffering injury because of defendant's discriminatory Pay and Progression System which occurred after he stepped down as shift team coordinator. When Palms gave up the shift team coordinator position in March of 1983, based on his belief that he was not being paid as much as the other shift team coordinators, he was told that his resignation from the shift team coordinator position would move him back a curve. Fifteen months later his pay curve was reduced from pay curve three to pay curve two. Palms said he contends that even without shift team coordinator in his career plan, his skills warranted placement on at least a pay curve three when you compared him to other equally qualified white Buckeye technicians.

Upon completion of his 1984 qualification examination, Palms received a rating of 100% proficient in longwood

and 75% proficient in shortwood. Palms, nevertheless, remained on a curve two pay level. Other white Buckeye technicians with lower qualification scores such as Tolbert Owens, who qualified at 50% proficient in longwood and 100% basic in wastefuel, and Harris Miller, who qualified at 50% proficient in longwood and 25% proficient in shortwood, were placed on a curve three pay level and paid more money than Palms.

Defendant has failed to convince the court that it had a legitimate business reason for not paying Palms on a pay curve three or better. Defendant's own proficiency scores of Palms, along with other evidence presented in this case, shows Palms to be a highly competent hard working technician who had the ability and qualifications to be a top performer in the longwood/shortwood area, although he was not paid as such. The court concludes that, even after Palms gave up his shift team coordinator position, the defendant has not produced a legitimate business reason for compensating Palms at a pay curve level lower than pay curve three. The fact that Palms was placed on a pay curve lower than three can be attributed to Buckeye's discriminatory Pay and

Progression System.

JAMES C. HOMER

James Homer was hired by Buckeye on July 7, 1980, and assigned to work in the pulping unit as a mechanical maintenance technician. In 1981, he received his initial career plan from Darrell Hart. The career plan Homer received listed only a basic in mechanical maintenance and had his pay curve level set at curve three.

Homer took his first qualification board examination in 1982 and was qualified as 100% basic in mechanical maintenance. When the new written qualification examinations were instituted at Buckeye, Homer obtained a qualification level in mechanical maintenance of 100% proficient unit wide and 100% proficient plant wide.

When he became 100% basic in mechanical maintenance following his 1982 qualification board examination, Homer still did not have any other skill areas added to his career plan. Homer specifically asked Buckeye management to add any type of cross training skill to his career plan. Homer's requests were

turned down despite the fact that there were other mechanical maintenance technicians in the same unit as Homer who had training skills in their plans, but were not actually undergoing the training.

In his position as a mechanical maintenance technician, Homer worked with and performed essentially the same tasks as white Buckeye technicians Herman Williams, Donald Ritch, Freddy Hogg, Joe Rogers, Haywood Jerkins, Tim Phelps, Charles Willis, Mickey Taylor, and Glenn Hair. However, Homer's pay was less than every one of those Buckeye technicians despite the fact that they all had the same job classification.

Defendant contends that Homer was paid less because he was not as skilled as the white technicians who received more money than Homer. Defendant's measure of Homer's skill level was primarily established through subjective qualification review boards, which were a component part of Buckeye's discriminatory Pay and Progression System. Defendant produced evidence which it asserted demonstrates that, it had a legitimate business reason for not including more skill areas in Homer's career plan and

placing him on a higher pay curve. The court finds that almost all of that evidence was after-the-fact justification which did not actually affect those decisions made by the defendant. The court further finds, after analyzing all reliable and credible evidence, that Homer had the qualifications to have additional skills placed in his career plan and to be placed on a higher pay curve; defendant did not have a legitimate reason for not doing so.

It is uncontested that the Pay and Progression System rewarded technicians according to the skills contained in their career plans. Buckeye technicians Williams, Ritch, Hogg, Rogers, Jerkins, Phelps, Willis, Taylor, and Hair received a higher wage than Homer because they had numerous skills placed in their career plans, unlike Homer whose original career plan only listed a basic in mechanical maintenance. Homer was told by his manager Hart that the reason he was being paid less than some of the other white maintenance technicians was due to his career plan.

Based on Homer's qualifications and defendant's failure to produce a

legitimate business reason for not putting additional skills in Homer's career plan and correspondingly placing him on a higher curve level, the court finds that, if not for the discriminatory Pay and Progression System, specifically the subjective manner in which Homer had skills placed in his career plan, Homer would have received a higher salary.

FRANKLIN SCOTT

Franklin Scott was hired by Buckeye on September 27, 1981, as a process technician in the pulping unit. Scott was in a hire group that began work at Buckeye approximately fourteen months after the majority of Buckeye technicians were hired. Scott expressed a preference to work in the power house unit or in process. He was told not to put down a preference in a particular skill area because that would be arranged for him once he arrived in the unit.

After being assigned to the pulping unit and going through about a week of orientation in the pulping unit, Scott was asked to indicate the areas in which he desired to work. Scott responded by listing digesting as his first choice.

Scott was eventually assigned to the O-2 (oxygen generation) area where he would work as an O-2 operator in the pulping unit. Scott's career plan issued in 1982 listed the O-2 skill area at a proficient level and his pay level was set at curve two.

Scott took his first qualification board examination in 1982 and received a 25% basic in O-2. Scott disputed the score he was given and on or around December 28, 1982, formally appealed the results reached by the qualification board. Scott's complaint was that the test was not standardized but rather a subjective test that one could not prepare for. It was subjective in Scott's opinion because there were methods and practices concerning the O-2 process that were still in the developing stage that had not yet been proven to work. Scott's appeal to change his score was not granted by the defendant.

In attempting to prove that he was injured by defendant's discriminatory Pay and Progression System, Scott compares himself to white technicians from his hire group and other O-2 technicians who Scott asserts he was just as qualified as

despite their being paid more than him. Scott has failed to convince the court that he possesses skills comparable to that group. Defendant presents convincing evidence that it had a legitimate business reason for paying Scott less than members of his hire group and the other O-2 technicians.

The court proceeds very carefully when examining evidence of Scott's job performance to determine whether it represents after-the-fact justification which actually failed to affect the critical decisions that resulted in Scott receiving less pay than members of his hire group and other O-2 technicians. In the case of Scott, there is uncontroverted evidence that he had problems performing his job in a satisfactory manner. Defendant could have, and evidently did, reach a decision very early in Scott's career with the company that he would at best be an average employee in whom the company should not invest a great deal of time and energy attempting to train in other skill areas. Scott contends that defendant's discriminatory Pay and Progression System caused him to be paid less than other similarly qualified white technicians because of his race. The court

finds that it was Scott's job performance that resulted in his lower salary.

HOSEY WHITE, JR.

Buckeye hired Hosey White, Jr. on July 7, 1980. White expressed a preference to work in unit one as his first choice and listed power house (unit four) as his second choice. White was given the position of mechanical maintenance technician and assigned to work in unit four. The specific area in unit four that White was to work in was the power blower area where he would be responsible for the air system and scoot blower. There were two other technicians, Mike Hutchings and Olin Hicks, initially assigned to the same area as White.

White attended training classes that lasted approximately three months. The classes covered a wide variety of areas and included hands on training. After the three month training period concluded, White was assigned to C team along with Clifton Locke, Loyce Clark and Olin Hicks. White started off working primarily with Loyce Clark until the two developed a strained relationship. White shortly thereafter requested a transfer

and was reassigned to A team where he was matched up with Jimmy Harrison.

White's first career plan gave him a basic in mechanical maintenance and placed him on a curve two pay scale where he currently remains. Before the career plan was issued by Chip Akin, White expressed his preference to Akin that he be assigned to the maintenance area and be allowed to get training in E & I, process, bark boiler, and power boiler. White and Akin discussed the degree of proficiency that White would attain in mechanical maintenance; after which White made the choice that his career plan should reflect only a basic in mechanical maintenance. White objected to having mechanical-proficient in his plan because he did not think he would be able to acquire that level while in unit four. After further discussions concerning White's career plan, White and Akin agreed that the E & I skill area in his plan would be too difficult for White to attain, so White agreed to a career plan that called for mechanical maintenance and bark boiler. White never did cross train in bark boiler and his career plan summary does not indicate that it was part of his career plan. White asked Akin if he could cross

train in welding and was turned down, although, Akin sent four white mechanical maintenance technicians, Loyce Clark, Terrell Edalgo, John Mays, and Calvin Benny Moore, to train in welding.

White has failed to convince the court that he was paid less than any similarly qualified white Buckeye technician on account of defendant's discriminatory Pay and Progression System. Defendant had a legitimate business reason for fashioning White's career plan the way it did and for paying him on a curve two level. Early in his career, White exhibited difficulty performing the technical assignments mechanical maintenance technicians often encountered. He, along with fellow mechanical maintenance technicians John Mays and Benny Moore, was one of the worst offenders when it came to completing work schedules. It was White himself who rated his skill level at basic rather than proficient. He has not demonstrated that he was qualified to be paid on a pay curve higher than two. The court has found no evidence to show that, absent the discriminatory Pay and Progression System, White would have received any different compensation nor that, while the System

was in place, he was held back or paid less than white technician with skills comparable to his.

VERNON ALEXANDER PUTMAN

Buckeye hired Vernon Alexander Putman on July 7, 1980, as part of its July hire group. Putman indicated to Buckeye, when asked, that he would prefer working in the powerhouse unit. Putman was assigned to the powerhouse unit to work as a mechanical maintenance technician. He first began working with B team which was comprised of himself and Barbara Key. In the latter part of 1982 Putman was reassigned to A team where he worked with John Mays.

In early 1982 Putman had his initial qualification board examination. Putman's examination was given orally. He was not told what he would be tested on before hand nor were any of his answers discussed with him after the test was completed. Putman originally received a 50% basic that was changed the next day to a 75% basic, after Putman spoke with his manager Steve Pender. Putman did eventually qualify 100% basic in 1983. Putman is now rated at 50% proficient but

has not yet qualified under the new system that replaced the old Pay and Progression System.

Putman's first career plan had him listed as having a basic in mechanical maintenance. He was placed on a curve two pay level where he currently remains, although a Buckeye manager, Frank Dennis Hooper, did wonder why Putman was not ranked on curve three. Putman's second career plan had a basic in either recovery boiler or evaporators. Putman never did cross train in either of those, or any other areas. Some of his fellow white mechanical maintenance technicians did have the opportunity to cross train; Jimmy Harrison cross trained in calcining, Olin Hicks cross trained on the bark boiler, Terrell Edalgo cross trained on evaporators, and John Mays had the opportunity to cross train in calcining. Bennie Moore, Loyce Clark, John Mays, and Terrell Edalgo all had the opportunity to go to the welding area.

Putman had the same career plan as Randall Washington, a white mechanical maintenance technician, but Putman was ranked on a curve two while Washington had a curve three ranking. Putman believes he

has been treated unfairly when compared to Randall Washington and also when compared to Patty Mason and Terrell Edalgo. The court has determined from the evidence that Putman was not as qualified as those individuals. Putman was a hard working competent mechanic. However, much like Hosey White, his mechanical maintenance skills were not comparable to most of the other Buckeye mechanical maintenance technicians both black and white. Putman performed his job at a basic level and as such defendant has demonstrated that it had a legitimate reason for paying Putman on pay curve level two. Putman suffered no adverse effect because of Buckeye's discriminatory Pay and Progression System. The court is convinced that no matter what kind of employee advancement system was incorporated at Buckeye, Putman's salary and position would not have changed.

GERRY PLANT

Gerry Plant was hired by Buckeye on June 9, 1980. At the time he was hired, Plant expressed a preference to work in maintenance and did in fact receive an assignment to work as a mechanical maintenance technician in the woodyard. He

was placed on a curve three pay scale.

Plant's original career plan listed mechanical maintenance at a proficiency level. In 1984 Plant was issued a new career plan that had mechanical maintenance-proficient and administrative coordinator. Plant had asked to have machinist, unit five building maintenance, welding, and process skill areas included in his career plan, but did not get any of those skill areas placed in his plan. Other Buckeye mechanical maintenance technicians, including Allen Massey, Ray Harth, Roy Peterson, Doug Johnson, Debbie Hearn, Chuck Whaley, Bill Chester, Wayne Tharpe, and Robert White, had cross skills placed in their career plans in 1981.

Plant was concerned that when he first began with Buckeye he was not receiving the job assignments that required the application of technical mechanical skills. He also talked to management about what he perceived to be a situation where blacks in his unit were not being allowed to cross train and were being kept on the lower pay curves by not having cross skills put into their career plans. The evidence presented in this case indicates that very few, if any, blacks in

unit one mechanical maintenance had cross skills placed in their career plans prior to 1984.

As time went by, Plant developed an expertise in working on the sludge press, the chipper, the fulghum cranes, the bark hog, the chip hog, the stacker, and the reclaimer. He gained a reputation as being one of Buckeye's better employees who was an excellent mechanic on the chipper.

By June 6, 1983, Plant had moved up the pay steps on pay curve three to the point that he had gotten all the pay raises that one could get while on curve three. At that point, the only way Plant could have received a pay raise would have been for him to have items added to his career plan so that he would move up to a new pay curve. Many white employees had likewise topped out on their particular curve level. Near the end of 1984, Buckeye's Pay and Progression System was put on hold and there were no more curve changes. Employees were allowed, however, to continue advancing within their curve level.

The qualification examinations, career plans, and the resulting curve

level assignments, all component parts of defendant's Pay and Progression System, clearly had a negative impact on Plant. Plant was recognized as one of the better maintenance technicians. However, on his first qualification board examination in 1982, he received a score that at first appeared to be a 25% proficient, but ended up being written on his qualification form as 100% basic. On the mechanical maintenance qualification board examinations administered by Buckeye in 1982, Plant and all other black mechanical maintenance technicians failed to get a rating higher than basic; the white mechanical maintenance technicians originally assigned to the same group as Plant received ratings no lower than proficient. In 1987, after the old Pay and Progression System had been replaced, Plant achieved a 100% proficiency rating in mechanical maintenance.

The evidence presented by Plant demonstrates that his mechanical maintenance ability was equal to or better than similarly situated white mechanical maintenance technicians who were placed on a higher pay curve than Plant. Examples include the placement of Chuck Whaley, a white technician given only a 50%

proficiency in woodyard maintenance, on curve four pay level; the placement of Bill Chester, a white technician given only a 25% proficiency in woodyard maintenance, on a curve four; and the placement of Deborah Hearn, a white technician given only a 100% basic score, on a curve four. Their placement on curve four occurred at a time when Plant had qualified as 75% proficient in woodyard mechanical maintenance and was being paid on a curve three pay level.

Although defendant produced evidence which it asserted demonstrated that it had a legitimate business reason for paying Plant the salary he was paid, the court finds that much of that evidence was after-the-fact justification which did not affect defendant's decision to place Plant on a curve level three. The remaining evidence amounted to nominal criticism which fails to provide a clear explanation for Plant's failure to be placed on a curve higher than three.

Accordingly, the court finds that defendant did not have a legitimate business reason for not placing Plant on a pay curve higher than three. Furthermore, the failure of Plant to be placed on a

curve higher than three occurred as a result of Buckeye's discriminatory Pay and Progression System.

WILLIAM PORTER

William Porter started working for Buckeye on December 3, 1979, as a technical trainer in the Woodyard. His job entailed developing training programs in the longwood and shortwood area for the incoming technicians. Porter had hoped he would be assigned a mechanical maintenance position. However, despite years of prior experience as a mechanic, Buckeye chose not to make Porter a mechanical maintenance technician. Instead, Buckeye made a legitimate business decision that, with his three years prior experience in the logging business, Porter would be of more value to the company working in the longwood/shortwood area.

On his career plan dated November, 1982, Porter was assigned the skills of longwood-proficient, shortwood-proficient, and water-proficient. Porter's second career plan contained longwood-proficient, shortwood-proficient, water-basic, mobile maintenance-basic, and placed Porter on a curve three pay level.

After Porter completed an initial six week period of training technicians, he performed follow-up training, updated training programs, and trained technicians on new equipment. Porter carried out his duties primarily in the longwood and shortwood area of the woodyard, although he did do some work in water treatment and worked in mobile maintenance multiskilling.

In the early part of 1981 Porter took his first qualification board examination. Porter's qualification board examination covered longwood and shortwood. The result of Porter's examination was that he received a 100% proficient in longwood and shortwood. Sometime in 1983, Porter took another qualification board exam in water treatment. On his water treatment qualification Porter was rated at 50% proficient.

On December 16, 1985, Porter received a rating of 100% basic in mobile maintenance. He did not go before a qualification board to receive the mobile maintenance rating, but rather answered some questions posed by the maintenance

manager George Palms, who decided Porter should get the 100% basic rating. Despite being given only a basic in mechanical maintenance, Porter wrote the preventative maintenance plan for the Terex, a large bulldozer, which other P.M. formats were modeled after.

Porter's work in the shortwood and longwood areas caused him to be exposed to poison ivy and poison oak which triggered an allergic reaction in him. Porter had medication he would take, however, the company did not want him to take the medication while he was at work because it caused him to get drowsy and become unable to perform his job safely. Porter asked that this problem be solved by allowing him to work in the water treatment areas and mobile maintenance. Buckeye made an effort to accommodate Porter's request by assigning him, as much as possible, to those areas during the summer months when the poison ivy and poison oak were most prevalent. In another attempt to solve Porter's allergy problem, Buckeye offered to transfer Porter to the waste and water treatment area or certain other units. Porter declined the invitation, expressing his desire not to leave the woodyard unit nor work exclusively in waste and water.

The area Porter wanted to work in was mechanical maintenance. He made repeated requests to transfer into that area. Although his requests to transfer were turned down, Porter did spend about a year in mobile maintenance cross training and approximately six months in waste and water working in water treatment. Other unit one white technicians, Lynn West Barry, Charlie Kare, and Randy Lawhorn, were allowed to transfer into mechanical maintenance. Willie Keen, a black technician, who worked in the waste fuel area was also allowed to transfer into maintenance on a full time basis.

Porter had outstanding technical skills and encountered few problems actually performing his assigned tasks. However, Porter had a serious attendance problem that ultimately cost him his job with Buckeye. It was a problem that extended throughout Porter's employment at Buckeye. The evidence presented demonstrates countless incidents of Porter's unauthorized tardiness or absences from work.

Porter was made aware of the fact that his chronic absenteeism had an effect

on his job rating. Porter received a three day suspension in August of 1983 because of what his manager, George Palms, described as dishonesty and inadequate communication regarding tardiness from work. In a note to the file prepared by Palms on Porter's return to work, Porter was reminded that he stood a good chance of being fired if he was involved in any further unacceptable work standards violations.

After another unauthorized absence from work, Palms, in a memorandum dated February 20, 1984, again informed Porter that he continued to seriously jeopardize his employment due to excessive lost work time. On May 10, 1984, Porter called his manager Bryant Orr, and told him he would not be able to report to work that night because he would be in too rough a shape from being intoxicated. The next day Porter checked himself into the Houston County Detoxification Ward and stayed there for a total of twenty eight days. Porter returned to work on June 12, 1984, at which time he was told that if he did not correct his work attendance problem his employment with Buckeye would be terminated. On July 3, 1986, Buckeye fired Porter because of his frequent absences

and for failing to return to work after recovering from injuries Porter suffered in a non-work related accident that occurred in December of 1985.

Porter asserts that because of defendant's discriminatory Pay and Progression System he was unable to transfer to the maintenance area and also failed to get a career plan that had any real value to it; thereby causing him to be unfairly compensated. The court finds that decisions made by Buckeye concerning Porter's career plan and salary were not based on discrimination, but rather legitimate business considerations predicated on Porter's unfavorable work record. Porter suffered no injury as a result of Buckeye's discriminatory Pay and Progression System.

ISSIAH ROSS, JR.

Issiah Ross, Jr. was hired by Buckeye on June 9, 1980. Ross, who did not express a preference to work in any particular area, was made a waste and water treatment technician and assigned to work in the woodyard unit. Ross was placed on B team along with Harold Hankerson and Willard Parker. As a waste and water

treatment technician, Ross basically did the same job as Willard Parker, Lynn Barry, and Jerry Barry.

Ross' original career plan called for a basic in water treatment and a basic in waste treatment. His pay curve was set at curve two where it remained until he was fired by Buckeye. Ross' next career plan had waste treatment-proficient, water treatment-proficient, and chip unloading-basic placed in it.

Ross stayed in waste and water treatment during his entire career at Buckeye. In fact, none of the black technicians in waste and water were ever transferred to another technical area while Ross worked at Buckeye. In Ross' case he never did apply for a transfer, although he asserts he would have had he known that E & I technicians and mechanical maintenance technicians were on a higher pay curve than waste and water treatment technicians.

On June 7, 1984, Ross took a qualification examination in waste and water which resulted in his being rated 100% proficient in water and 50% proficient in waste. Ross had another

qualification in waste on December 7, 1984, and was told he received a rating of 75% proficient. A sheet indicating the results of that December 7, 1984, qualification examination shows that a 75% was originally written down as the result of his qualification and then scratched over and replaced with the notation of not proficient. (Def. ex. 2 at 63).

Ross was put on an improvement plan prior to his 1984 qualification board. He was asked to write up the improvement plan but did not do so. One was written up for him by Lisa Routh. Ross' improvement plan primarily listed projects that Ross should concentrate on completing. Ross was the only one in his area put on an improvement plan. After the plan was drafted and reviewed with Ross, he was asked and agreed to present documentation which would demonstrate his improvement according to the plan. Ross did not produce any written documents to show that he was making progress towards completing his improvement plan.

Ross became disenchanted and frustrated with the Pay and Progression System because of what he perceived to be its discriminatory effect. His

relationship with his fellow employees and managers began to suffer as a result. Ross did express some of his concerns to Buckeye management personnel. On February 20, 1984, Ross met with Hooper and asked why black maintenance technicians were not allowed to cross train in the process area.

In 1984 Ross had numerous notes placed in his file indicating that his managers were not totally pleased with his dedication to his job and questioned whether Ross was performing up to the fullest extent of his ability. On July 2, 1984, Ross was informed by Buckeye management that they considered his contribution level unacceptable. He was told that if he did not achieve proficiency in both waste and water treatment and improve his overall performance and application of skills, he would not remain employed by Buckeye. Ross took a qualification in April of 1985 and was told that he did not get a 100% proficiency. Shortly thereafter, Ross was fired from his job at Buckeye.

During the early years of Ross' employment at Buckeye, when Ross and other technicians received their career plan,

cross training assignments, and were placed on their respective pay curve levels, Ross was considered a valuable employee whose skills were comparable to Lynn Barry, Jerry Barry, and other white Buckeye waste and water treatment technicians who wound up with initial placements on a curve three pay level or higher. There is testimony indicating that Ross was able to carry on day-to-day operation of the waste and water treatment area with acceptable results. In running the day-to-day operations, Ross performed the same job that other pay curve three white waste and water technicians were doing, although he was only being paid on a curve two pay level. A telling indication of Ross' qualifications and ability to perform his job as well as the curve three waste and water treatment technicians was the fact that his manager chose him, and not one of the curve three technicians, to train technicians who were cross training in water treatment. Ross carried out the task of training these technicians, despite the fact that he was not rated as proficient in water treatment at the time.

In an effort to establish that it had a legitimate business reason for

placing Ross on pay curve two, Defendant presented evidence which indicated that there were times when Ross had problems performing his job. The court finds, however, that almost all of that evidence was after-the-fact justification which could not have affected defendant's decision to place Ross on a curve two pay level. Furthermore, in balancing the evidence, the court finds that in his early years with Buckeye, Ross did not encounter any greater performance problems than the other white technicians who were paid on curve three.

Buckeye's Pay and Progression System caused almost every white technician who started out in waste and water treatment to be initially placed on curve three and almost every black waste and water technician to be placed on curve two. That same system injured Ross by causing him to be placed on curve two instead of curve three, where, based on his qualifications, he deserved to be. Buckeye has failed to convince the court that it had a legitimate business reason for placing Ross on curve two when similarly situated and equally talented white waste and water treatment technicians were placed on curve three.

EDDIE SLAUGHTER

Eddie Slaughter was hired by Buckeye on September 28, 1981. Slaughter was assigned to work in the woodyard unit in the chip unloading area. Slaughter's June, 1984 career plan summary shows that he had a career plan that called for chip unloading at a proficient qualification level. That same career plan summary listed a total new career plan that included chip unloading-proficient, waste fuel-proficient, and longwood-proficient.

In 1983 Slaughter had a proficiency rating of 100% basic in chip unloading and 100% basic in waste fuel. In 1984 his proficiency rating was 100% proficient in waste fuel and 100% proficient in chip unloading.

Slaughter was initially placed on a curve two pay plan and was still on curve two when his June 1984 career plan was prepared.

Slaughter asserts that he was injured by Buckeye's Pay and Progression System because its use resulted in him being paid less money for doing the same

work as equally qualified white Buckeye technicians. Despite his charges, however, Slaughter failed to appear at the trial and present any testimony to substantiate his claim. Nevertheless, Slaughter's attorney attempted to prove his case, but he was unable to demonstrate that Slaughter was personally discriminated against. In Slaughter's case, the court was left with insufficient evidence to reach the conclusion that Slaughter suffered any injuries because of Buckeye's discriminatory Pay and Progression System.

II. CONCLUSIONS OF LAW

Plaintiffs in the above styled case contend that defendant had a facially neutral employment practice which had a disparate impact on plaintiffs in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. In Buckeye I, the court set out to determine the validity of the plaintiffs' claim through application of the Wards Cove test. n1 The court initially found that defendant's Pay and Progression System, which utilized career plans, skill points, rankings, qualification review boards, and pay curves, was an integral part of the plant's function and was a

definite policy/practice of the company.

Next, after an exhaustive study of the relevant statistical evidence, the court found that plaintiffs had established the existence of racial disparity in regard to the salaries paid to similarly situated n2 black and white technicians at Buckeye. The court then ruled that the Pay and Progression System was the primary, if not sole, method of determining a technicians salary and that a causal connection existed between the exhibited racial disparity and the Pay and Progression System. Having found that plaintiffs met their burden of establishing a prima facie case under the disparate impact theory of recovery, the defendant inherited the burden of producing evidence which showed that the Pay and Progression System furthered legitimate employment goals. n3

Defendant met its burden of production and the court found that the Pay and Progression System had a legitimate business goal. However, the court went on to rule that an alternative employment practice that did not have an undesirable racial effect similar to that which the Pay and Progression System had

was available to Buckeye. The court's ruling established that the goals involved in the Pay and Progression System represented a legitimate business justification for the Pay and Progression System; but the actual mechanics of defendant's Pay and Progression System, implemented in an attempt to reach those goals, did not pass the second stage of the business justification test because an alternative practice was available to achieve those goals with less racial impact. Thus evolved Buckeye I's holding that defendant's Pay and Progression System, now abandoned, was a discriminatory practice which had a disparate impact on black technicians employed at Buckeye. Having made the above conclusions of law in Buckeye I, the purpose of this opinion is to now examine the claim of each plaintiff and determine if he or she was individually injured by defendant's Pay and Progression System.

Under the disparate impact theory of recovery, the plaintiff must prove individual harm. See Stephen v. PGA Sheraton Resort, Ltd., 873 F.2d 276, 279 (11th Cir. 1989). In order to demonstrate individual harm, the individual plaintiff must show that application of the specific

discriminatory practice has caused him or her to suffer a significant adverse effect. Hill v. Seaboard Coast Line R. Co., 885 F.2d 804, 811 (11th Cir. 1989). Defendant can rebut a plaintiff's claim of individual injury by demonstrating that the adverse effect he or she complains of was dictated by a legitimate non-discriminatory reason. Stephens, 873 F.2d at 279. Lack of ability or inferior qualifications are considered by this court to be legitimate non-discriminatory reasons upon which an employer can base its employment decisions. See Stephen, 873 F.2d at 280. The court will not, however, rely on "after-the-fact justification" nor "general non-time specific testimony concerning employees' inefficiency. . . ." Crawford v. Western Elec. Co. Inc., 745 F.2d 1373 (11th Cir. 1984).

In the case at bar, the parties dispute the basis upon which the court can determine whether or not an individual plaintiff had the requisite ability or qualifications. Defendant asserts that in a situation in which an employee is claiming disparate impact, the employee is required to show that he met all of the employer's criteria, both objective and subjective, to establish that he was

qualified. Plaintiffs argue that the court should only consider objective criteria. The court concludes that it may consider both objective and subjective criteria in the case sub judice. "It [is] within the district court's role and capabilities to assess whether the subjective employment qualification was bona fide and whether an employer's testimony that the plaintiff did not possess the qualification was credible." Seaboard Coast Line R. Co., 885 F.2d at 809.

The court will proceed very carefully in evaluating the subjective standards and qualifications used by defendant in implementing its Pay and Progression System. The court is mindful of the fact that in reaching its finding in Buckeye I that the Pay and Progression System was a discriminatory employment practice, the court concluded that defendant's lower level management had practically autonomous subjective authority given to them to carry out the System and that the ranking system was almost totally a subjective program with few, if any, standards to guide the managers. Furthermore, the qualification examinations and career plans developed under the Pay and Progression System were

primarily the result of lower level management exercising its subjective decision making authority. In instances where defendant's assessments, standards, and qualifications concerning individual plaintiffs are wholly subjective, the court will not consider such evidence. n4 To allow defendant to use such evidence it created under a system found to be discriminatory, when the very effect of the discriminatory system complained of was the failure of the defendant to accurately assess and establish the qualifications of the individual plaintiffs, would be grossly unfair to the plaintiffs in this case.

Having previously found in Buckeye I that the defendant's Pay and Progression System, with its many component parts, was a discriminatory employment practice that had a disparate impact on black employees at the Buckeye plant, the court now turns its attention to determining whether the individual plaintiffs in the instant case have carried their burden of establishing that they individually suffered injury as a result of defendant's discriminatory Pay and Progression System. Based on the above findings of fact, and the findings of fact and conclusions of law made in Buckeye I,

the court rules that plaintiffs Taylor, Herring, Palms, Homer, Plant, and Ross have demonstrated that they suffered individual injury as a result of defendant's discriminatory Pay and Progression System. Accordingly, the court holds that the defendant is liable to plaintiffs Taylor, Herring, Palms, Homer, Plant, and Ross for damages incurred by these plaintiffs as a result of their injuries. Plaintiffs Scott, White, Putman, Porter and Slaughter did not prove that they suffered individual injury as a result of defendant's discriminatory Pay and Progression System and thereby failed to establish liability on the part of defendant towards them. As expressed in Buckeye I, the court seeks only to settle the liability issue at this stage and will address remedies at a later date.

SO ORDERED, this 2 day of April, 1990

OPINION FOOTNOTES

n1 In a suit brought under the disparate impact theory the plaintiff must first establish a prima facie case by: (1) articulating a specific employment practice; (2) showing a racial disparity;

and (3) demonstrating a causal connection between the specified employment practice and the racial disparity. Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 109 S. Ct. 2115, 104 L. Ed. 2d 733 (1989).

n2 In Buckeye I, the court found that the function, operation, and manner in which Buckeye set up the technicians system resulted in the technicians being similarly situated.

n3 Upon a prima facie showing of discrimination based on a disparate impact theory of recovery, the case moves into the secondary evidentiary stage known as the Business Justification Stage. Wards Cove, 109 S. Ct. at 2125. The eventual question in this examination concerns the extent that the challenged practice furthers the employers legitimate employment goals. Id. This stage contains two alternative aspects: (1) the proffered business justification; and (2) available alternative practices. Id. If a plaintiff can persuade the court on either of these aspects of this stage of the case, then he or she can recover.

n4 See Crawford v. Western Elec. Co. Inc., 745 F.2d 1373, 1385 (11th Cir.

1984), where the court held that "an employer may not utilize wholly subjective standards to judge its employees' qualifications and then plead lack of qualifications when its promotion process is challenged as discriminatory."

APPENDIX D (BUCKEYE III)

ISSIAH ROSS, JR., WILLIAM MORGAN PORTER, JOHNNIE LEE PALMS, JAMES C. HOMER, JOHN W. TAYLOR, VERNON ALEXANDER PUTMAN, HOSEY J. WHITE, JR., FRANKLIN ROOSEVELT SCOTT, GERRY PLANT, TABITHA HERRING, EDDIE SLAUGHTER, Plaintiffs,

vs.

BUCKEYE CELLULOSE CORP., Defendant

CIV. No. 86-048-ALB/AMER (DF)

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, ALBANY/AMERICUS DIVISION

764 F. Supp. 1543

June 4, 1991, Decided

COUNSEL

James Finkelstein, Albany, Georgia, for Plaintiffs.

John G. Skinner, Robert N. Godfrey, SMITH, CURRIE & HANCOCK, Atlanta, Georgia, for Defendant.

JUDGES

Duross Fitzpatrick, United States District Judge.

AUTHOR: FITZPATRICK

OPINION

DUROSS FITZPATRICK, UNITED STATES DISTRICT JUDGE

In an order issued by the court in the above styled case on August 11, 1989, 733 F. Supp. 344 (hereinafter referred to as Buckeye I), the court determined that defendant's Pay and Progression System was a discriminatory employment practice that had a ongoing disparate impact on blacks employed at Buckeye Cellulose Corporation (Buckeye). On April 2, 1990, 733 F. Supp. 363, the court concluded the second phase of this case, (hereinafter referred to as Buckeye II), by rendering its individual findings of facts and conclusions of law concerning defendant's liability to the individual plaintiffs arising from their disparate impact claim. The court will now complete the final phase of this action by determining herein the damage award each prevailing plaintiff in this case is

entitled to receive and by ruling on plaintiffs' request for attorney's fees. Defendant would also have the court revisit the issue of whether or not plaintiffs' filed their charges against the defendant in a timely manner. The court, however, will not reexamine that issue and instead stands by its earlier ruling rendered in Buckeye I.

I. DAMAGES

In awarding damages to the prevailing plaintiffs (hereinafter plaintiffs), the court must attempt to place each one in the position he or she would have been in absent defendant's discriminatory practices. Albemarle Paper Co. v. Moody, 422 U.S. 405, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975). The means of accomplishing that goal in this case is to award back pay and other equitable relief, which the plaintiffs in this case are entitled to receive based on the court's finding that they are victims of defendant's discriminatory Pay and Progression System. Id. at 418-19, 95 S. Ct. at 2372. Interest, overtime, shift differentials, and fringe benefits such as vacation pay, sick pay and profit sharing are all components of back pay that are to

be included in the computation of such an award, if applicable. See Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1562 (11th Cir. 1986). The back pay awarded should equal the amount the party would have received had there been no discrimination less the pay he or she actually collected as a result of the defendant's discriminatory actions. Moody, 422 U.S. at 418-19, 95 S. Ct. at 2372.

An award of back pay damages also entitled the recipient to receive prejudgment interest on the damage award computed in accordance with the prevailing IRS prime rates. See EEOC v. Guardian Pools, Inc., 828 F.2d 1507, 1512 (11th Cir. 1987); Smith v. American Service Co. of Atlanta, Inc., 796 F.2d 1430, 1432 (11th Cir. 1986). All plaintiffs receiving back pay damages in this action will therefore be granted prejudgment interest on the amount of back pay awarded each year as computed by the clerk of court based on the prevailing IRS prime rates. Further equitable relief appropriate in this case is the placement of plaintiffs currently employed at Buckeye on the same pay scale they would have been on but for the discriminatory practices of Buckeye. See International Brotherhood of Teamsters

v. United States, 431 U.S. 324, 364, 97 S. Ct. 1843, 1869, 52 L. Ed. 2d 396 (1977).

Determining the amount of back pay that should be awarded to the plaintiffs in this case will require the court to "recreate the employment history of the individual victims and hypothesize the time and place of each employee's advancement absent the unlawful practice." Myers v. Gilman Paper Co., 527 F. Supp. 647, 649-50 (S.D. Ga. 1981)(citing International Brotherhood of Teamsters, 431 U.S. at 372, 97 S. Ct. at 1873). In doing so, "unrealistic exactitude is not required, [and] uncertainties in determining what an employee would have earned but for the discrimination, should be resolved against the discriminating employer." Pettway v. American Cast Iron Pipe Co., 494 F.2d 211, 260-61 (5th Cir. 1974). The court will engage in an imprecise process that will necessarily require a certain amount of estimation. International Brotherhood of Teamsters, 431 U.S. at 372, 97 S. Ct. at 1873. A process made even more difficult by the fact that the very nature of defendant's discriminatory practice was the systematic, ongoing failure of Buckeye to fairly appraise, examine, qualify, and

reward the plaintiffs. The calculation of back pay damages in this case, however, is by no means an impossible task that will force the court to engage in mere speculation.

The court heard months of testimony in this case which has allowed it to piece together an accurate picture of the competence, intelligence, and skill of each of the plaintiffs in comparison with their fellow workers and to determine how those attributes would have resulted in their advancement in a work place such as Buckeye's absent discriminatory practices. Mindful of those findings and aided by thousands of pages of records, transcripts, and exhibits, the court will determine the damages each plaintiff is entitled to receive based on its finding that they were injured by Buckeye's discriminatory Pay and Progression System.

In computing back pay damages in this case, the court first determined each plaintiff's actual average annual hourly rate and the actual hours that plaintiff worked each year. The court then determined the average annual hourly pay rate of a similarly situated white technician. Using that data, the court

projected the annual salary plaintiff would have earned absent defendant's discriminatory practices by multiplying the average annual hourly pay rate of the similarly situated white technician times the actual hours the plaintiff worked each year. The resulting figure, minus the plaintiff's actual annual salary, equals the amount of back pay damages awarded.

The period of the comparisons used to determine the extent of each plaintiff's injury began on the date two years prior to the filing of the particular plaintiff's EEOC complaint and ended when either he or she began receiving the same compensation as the person he or she is being compared with or when the particular plaintiff resigned or was terminated; whichever came first. In the case of plaintiffs Taylor and Palms, the period began on the date two years prior to the filing of their EEOC complains and continued to the present since both are still employed by Buckeye but have never reached the top wage rate comparable white technicians were paid.

Once the additional back pay amount was established, the court had the defendant determine the additional

benefits each plaintiff would have been entitled to receive as a result of the increased salary each would have earned under the courts calculations.

JOHN TAYLOR

The court's findings of fact demonstrate that plaintiff John Taylor had numerous talents that Buckeye took advantage of which made him one of their most valued employees. The skills Taylor possessed and the manner in which he carried out his job earned similarly situated white employees at Buckeye the highest ratings and largest salaries paid by Buckeye. This employee, who Buckeye thought enough of to make a shift team coordinator, would have advanced rapidly at the company if not for its discriminatory Pay and Progression System. The court therefore finds that in order to place Taylor in the position he would have been in absent defendant's discriminatory practices, his compensation should be computed in accordance with what the highest paid technicians at Buckeye were paid.

One of the higher paid white technicians who Taylor compares most

favorably to is Walter "Sonny" Ard. Consequently, the most reliable means of determining the damages Taylor is entitled to receive is to compare his wage rate to that of Walter Ard and award him such damages as would result in him earning the same compensation Buckeye paid Walter Ard when Ard was considered one of their top technicians. Such a comparison reveals that Taylor is entitled to a back pay damages award of $ 57,963.00 n1 plus prejudgment interest and profit sharing benefits totaling 126.498 shares of Buckeye common stock, 3.572 shares of preferred stock, and $ 150.23 in cash. See Defendant's Supplemental Memorandum Regarding Damages, exh. C and exh. A-1. Those compensation computations which have been verified and are hereby adopted by the court, as is the case with all the compensation figures used in this order, were computed by the defendant in strict accordance with the court's instructions for compiling damages detailed earlier in this opinion. See appendix for a complete breakdown of all the compensation computations. In order to place Taylor in the position he would have been in absent defendant's discriminatory practices, Buckeye is also ORDERED to immediately begin paying Taylor at a wage rate

comparable to a curve 5 pay rate and to maintain him on that wage rate as long as he satisfactorily performs his job.

TABITHA HERRING

A recreation of plaintiff Tabitha Herring's employment history indicates that she would not have advanced as quickly or as far as plaintiff Taylor but, nevertheless, would have received greater compensation than she actually obtained if not for Buckeye's unlawful practices. The court noted in its findings of fact that Herring was unjustly injured when she had mechanical maintenance removed from her career plan and was continually denied the opportunity for meaningful advancement as a result of Buckeye's discriminatory Pay and Progression System. In attempting to discern how and when plaintiff Herring would have advanced absent the discrimination at Buckeye, the court finds that the careers of similarly situated white technicians Jerry Barry and Lynn West Barry provide a good example of how Herring's career would have progressed had she not been discriminated against. Those technicians, like Herring, were not considered, nor compensated as, top of the line employees. They were, however,

competent employees who could be relied upon to perform their jobs in a satisfactory manner. A comparison of the compensation Jerry Barry received and that of plaintiff Herring indicates that in order to make her whole again she is entitled to a damage award of $ 17,510.00 n2 in back pay plus prejudgment interest and profit sharing benefits totaling 47.146 shares of Buckeye common stock and $ 24.15 in cash. See Defendant's Supplemental Memorandum Regarding Damages, exh. A and exh. A-1.

JOHNNIE LEE PALMS

The skills and training plaintiff Johnnie Lee Palms brought to Buckeye made him a top candidate for rapid advancement within the company. It is clear from the court's findings that Buckeye recognized the accomplishments and talent of Palms by making him a shift team coordinator; one of its top positions for technicians. Palms performed tasks on the same skill level as Buckeye's higher rated white technicians. As a result of the discriminatory Pay and Progression System, however, Palms was not compensated or promoted similar to white technicians who were deemed superior technicians. Absent

the discriminatory practices of Buckeye, Palms would have not only been utilized as one of Buckeye's top technicians; he also would have been compensated like one.

Above average white technicians at Buckeye who had similar skills and training as Palms, such as Joseph Willard Parker, provide the appropriate model for determining the extent of Palms damages. Comparing Palms compensation with that of Parker indicates that in order to place Palms in the position he would have been in had he not been discriminated against, Palms is entitled to receive a back pay award of $ 31,982.00 n3 plus prejudgment interest and profit sharing benefits totaling 66.396 shares of Buckeye common stock, 1.388 shares of preferred stock, and $ 68.85 in cash. See Defendant's Supplemental Memorandum Regarding Damages, exh. D revised and exh. A-1. In order to place Palms in the position he would have been in absent defendant's discriminatory practices, Buckeye is also ORDERED to immediately begin paying Palms at a wage rate comparable to a curve 4 pay rate and to maintain him on that wage rate as long as he satisfactorily performs his job.

JAMES C. HOMER

Plaintiff James Homer was a hard working mechanical maintenance technician who eagerly sought to gain training skills in any area Buckeye would allow in order to enhance his value to the company. Because of Buckeye's discriminatory Pay and Progression System, however, Homer was consistently denied the opportunity to have cross skills added to his career plan and thereby increase his salary. He worked beside comparably skilled white technicians who were paid a higher salary than he was despite the fact that they all had the same job classification. Homer had the qualifications to have additional skills added to his career plan and to be compensated at rate equal to similarly situated white technicians such as William "Freddy" Hogg, Jr., and David "Tim" Phelps; and would have been so compensated absent Buckeye's discriminatory practices. Therefore, in order to make Homer whole again, he must be awarded compensation equal to that of Phelps' and Hogg's which amounts to damages of $ 13,759.00 n4 in back pay plus prejudgment interest and profit sharing benefits totaling 37.149 shares of Buckeye common stock and $ 19.09 in cash. See Defendant's Supplemental Memorandum Regarding Damages, exh. B and

exh. A-1.

GERRY PLANT

Plaintiff Gerry Plant exhibited a conscientious desire to excel in all phases of his job with Buckeye. Plant gained a reputation as being one of Buckeye's best technicians with unparalleled mechanical skills on some of the companies specialized equipment. Throughout his career at Buckeye he was a highly competent hard working technician who had the ability and qualifications to be a top technician. The evidence in the case indicates that absent Buckeye's discriminatory practices he would have been compensated as such.

Allen Massey, Ray Harth, and Roy Peterson are white technicians at Buckeye who had similar skills as Plant and demonstrate the promotions and compensation Plant would have received at Buckeye had he not been the victim of Buckeye's discriminatory practices. Comparing Ray Peterson's compensation to the compensation Plant earned indicates that Plant's damages as a result of Buckeye's discriminatory Pay and Progression System are $ 23,760.00 n5 in

back pay (which represents $ 33,760.00 computed as back pay owing minus the $ 10,000.00 damage award he received under his Section 1981 claim) plus prejudgment interest and profit sharing benefits totaling 85.100 shares of Buckeye common stock, 0.769 shares of preferred stock, and $ 63.37 in cash less a $ 1,000.00 deduction which must be made from Plant's profit sharing benefits since Plant received a previous jury award of $ 1,000.00 as compensation for lost benefits. See Defendant's Supplemental Memorandum Regarding Damages, exh. E and exh. A-1.

ISSIAH ROSS, JR.

Plaintiff Issiah Ross, Jr., was a solid employee who was able to carry on the day-to-day operation of the areas he was assigned to work in an acceptable manner. In performing his job, however, he was paid less than other similarly situated white technicians who were performing the same tasks with relatively the same results. An indication of Ross' qualifications and ability to perform his job as well as his higher paid counterparts is demonstrated by the fact that Buckeye chose him, and not his higher

paid and rated fellow employees, to train technicians who were cross training in the area in which Ross worked. The court's findings demonstrate that Ross was initially placed on a lower pay scale than he deserved to be on and was kept there as a direct result of Buckeye's discriminatory Pay and Progression System. Had there been no discrimination at Buckeye, Ross undoubtedly would have received compensation commensurate with that received by Jerry Barry; a white technician at Buckeye of equal standing with Ross. A comparison between the compensation of Jerry Barry and Ross indicates that Ross suffered damages because of Buckeye's discriminatory practices in the amount of $ 21,971.00 n6 in back pay plus prejudgment interest and profit sharing benefits totaling 54.410 shares of Buckeye common stock and $ 27.88 in cash. See Defendant's Supplemental Memorandum Regarding Damages, exh. F and exh. A-1.

II. ATTORNEY'S FEES

The final matter pending before the court in this case is the plaintiffs' motion for attorney's fees. The established procedure for resolving such

an issue is for the court to determine the number of hours plaintiffs' attorney reasonably expended on the litigation and multiply that figure by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983). The resulting yield is commonly known as the "lodestar," which the court may then adjust up or down in its discretion depending on various considerations involved in the case.

The court's first step in determining the proper attorney's fees in this case will be to ascertain the appropriate reasonable hourly rate. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." Norman v. Housing Authority of Montgomery, 836 F.2d 1292 (11th Cir. 1988)(citing Blum v. Stenson, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541, 1547 n. 11, 79 L. Ed. 2d 891 (1984)). The relevant legal community in this case is the area in which this court sits and the service provided was the litigation of a complex employment discrimination suit by an experienced attorney who demonstrated a considerable

amount of skill in organizing and advocating plaintiffs' case. A review of the evidence the parties have submitted regarding a reasonable hourly rate in such an area for such services indicates that the prevailing rate a reasonably comparable attorney would receive is $ 135.00 per hour. Plaintiffs' attorney in the instant case, therefore, is entitled to compensation at the rate of $ 135.00 per hour.

The next step in deciding the appropriate attorney's fees award is to ascertain the number of hours reasonably expended by plaintiffs' attorney. In determining that figure, "'excessive, redundant or otherwise unnecessary' hours should be excluded from the amount claimed." Norman, 836 F.2d at 1301 (citing Hensley, 461 U.S. at 434, 103 S. Ct. at 1939-40). A careful review of the 2242.50 hours submitted by plaintiffs' attorney does not reveal the presence of any excessive, redundant or otherwise unnecessary hours which should be excluded from the amount he has claimed. Plaintiffs' attorney has used good "billing judgment" by submitting only hours which it would not be unreasonable to expect him to present to one of his

paying client.

Having determined the reasonable hourly rate ($ 135.00 per hour) and the hours reasonably expended (2242.50), the court is able to calculate that the lodestar amount in this case is $ 302,737.50 (2242.50 hours @ $ 135.00 per hour). Establishing the appropriate amount of attorney's fees to be awarded does not, however, end with the computation of the lodestar. The next step the court must undertake is to make any necessary adjustments to the lodestar based upon the results obtained by plaintiffs' attorney. Norman, 836 F.2d at 1302. The court's assessment of the results obtained in a case such as this, where the theories of the consolidated cases derive from a common core of operative facts, should focus on the overall outcome. Id. If that outcome, however significant, is "limited in comparison to the scope of the litigation as a whole," then it is proper for the court to reduce the lodestar figure. Id. "In doing so, the court may attempt to identify specific hours spent in unsuccessful claims or it may simply reduce the award by some proportion." Id.

Plaintiffs' attorney in the instant

case realized significant results. The results were, however, limited when one notes that the litigation as a whole involved separate claims for relief by thirteen individual plaintiff of which six ultimately received a damages award. The court, therefore, finds it necessary to proportionately reduce the lodestar amount of $ 302,737.50 by twenty-five percent (25%) thereby arriving at an attorney's fees award of $ 227,053.12.

The court's reduction is not based on a simple ratio of successful plaintiffs to the total number of plaintiffs involved nor prevailing issues opposed to issues presented. See Hensley, 461 U.S. at 435 n. 11, 103 S. Ct. 1940, 76 L. Ed. 2d 40 n. 11. Rather, the court took into account the fact that some of the plaintiffs' attorney's efforts were dedicated solely to advancing the cause of unsuccessful plaintiffs although a vast majority of his time was used to analyze, organize, and present evidence that was germane to all the cases. See id. at 435, 461 U.S. at 435, 103 S. Ct. at 1940.

Another issue the court must address is whether the attorney's fees award should be enhanced. An enhancement

is in order "if the results obtained were exceptional." Norman, 836 F.2d at 1302. A review of the outcome of this case based on that criteria indicates that an enhancement of the attorney's fees award is unwarranted. Plaintiffs' attorney obtained important results that will undoubtedly guide future actions and decisions of Buckeye. The outcome cannot be classified as exceptional, however, since it was not an unexpected result in light of the prevailing law which clearly outlaws the type of discrimination defendant imposed upon the plaintiffs. See Id.

Enhancement of an attorney's fees award may also be appropriate when the attorney's fee was set up on a contingency basis, as was the situation in this case. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 730, 107 S. Ct. 3078, 3089, 97 L. Ed. 2d 585 (1987) (Delaware Valley Citizens' Council II). That type of enhancement is to be awarded, however, only when it is demonstrated that it is necessary as the only means of insuring the availability of attorneys. Id. at 731, 107 S. Ct. at 3089 (O'Connor, J., concurring); Perkins v. Mobile Housing Board, 847 F.2d 735, 738-39

(11th Cir. 1988). There has not been an adequate showing that attorneys were not, and are not, available in this court's district to take on the type of case now before the court. The court, therefore, declines to enhance the attorney's fees awarded in this case based on the existence of a contingency fee arrangement.

The final basis considered by the court upon which enhancement may be warranted is if there is a delay in the prevailing counsel's receipt of payment. Norman, 836 F.2d at 1302. If the court determines that there is a delay, it may "award compensation at current rates rather than at historic rates." Id. Plaintiffs' attorney began work on this case in 1985 and has yet to receive final compensation which leads this court to conclude that there has been a delay in his receipt of payment. The court, therefore, finds that the hourly rate applicable in this case should be computed in accordance with current rates and the court has done just that in arriving at the reasonable hourly rate of $ 135.00 afforded the plaintiffs' attorney.

As part of his attorneys' fees,

plaintiffs' attorney has also requested reimbursement for mileage expenses totaling $ 2,009.41. Reasonable expenses are considered a component of reasonable attorney' fees in this circuit. Dowdell v. Apopka, 698 F.2d 1181 (11th Cir. 1983). The court therefore GRANTS the request for mileage expenses totaling $ 2,009.41 since it considers the amount to be a reasonable expense; especially since this was an Albany Division case tried in the Macon Division.

Along with their request for attorney's fees, plaintiffs have also asked the court to award expert witness' fees and support staff costs. The expert witness' fees requested by the plaintiffs totals $ 85,992.50 for services rendered by Mr. Jimmy Ramsey. Recent case law indicates, however, that the court cannot award plaintiffs the expert witness' fees that they have requested.

In the case of International Woodworkers of America v. Champion International Corp., 790 F.2d 1174 (5th Cir. 1986), the Fifth Circuit Court of Appeal thoroughly analyzed the issue of whether the prevailing party in a Title VII and 42 U.S.C. 1981 employment

discrimination suit was entitled to expert witness' fees. In resolving that issue, the court first noted that American courts have traditionally been denied the right to tax expert witness' fees beyond those specifically authorized by statute. It was only through creative interpretation of Senate reports read to indicate Congressional intent to apply different rules in civil rights cases that courts were able to award any expert witness' fees beyond those provided for in 28 U.S.C. 1821. n7 See Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981)(en banc), cert. dismissed, 453 U.S. 950, 69 L. Ed. 2d 1033, 102 S. Ct. 27 (1981), overruled by International Woodworkers of America, 790 F.2d at 1180. In overruling all previous decision it rendered based on such an interpretation, the court in International Woodworkers went on to note that a true reading of those reports fails to establish any judicial authority to award a prevailing party expert witness' fees. It concluded that:

Given Congress' ability to provide explicitly for the taxing of excess expert witness' fees as costs, we should not infer congressional intent to award such costs in the absence of an express statute

so providing. Moreover, a statute which provides only for an award of "costs" or "attorneys' fees" but which fails to address expert witness' fees will not be construed to authorize the taxing of expert witness' fees in excess of the 1821 amount.

International Woodworkers, 790 F.2d at 1179-80. Based on that conclusion and its finding that 42 U.S.C. 1988 and 2000e-5(k) make no provisions for an award of excess expert witness' fees, the court held that the prevailing plaintiff was not entitled to receive any expert witness' fees other than those specified in 28 U.S.C. 1821. Id. at 1181.

The plaintiff in International Woodworkers appealed the decision of the Fifth Circuit and his petition for certiorari was granted by the Supreme Court of the United States. International Woodworkers of America, 790 F.2d 1174, cert. granted sub nom. Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385 (1987). The Supreme Court reviewed the analysis employed by the Fifth Circuit in reaching it decision and stated "we agree and hold that when a prevailing party seeks

reimbursement for fees paid to its own expert witnesses, a federal court is bound by the limit of 1821(b), absent contract or explicit statutory authority to the contrary." Crawford Fitting Co., 482 U.S. at 439, 107 S. Ct. at 2496. Accordingly, this court holds that plaintiffs in the instant case are not entitled to receive any expert witness' fees other than those specified in 28 U.S.C. 1821. Those expenses plaintiffs' are entitled to receive as expert witness' fees under 1821(b) will be taxed as costs which plaintiffs can recover by submitting a bill of costs to the clerk of court.

In line with the reasoning adopted in Crawford Fitting Co., the court is also precluded from reimbursing plaintiffs for the cost of services provided by Terri C. Long. There is no indication from the evidence that Ms. Long, a former manager at MacGregor Golf Co., performed any legal work which can be properly billed under the heading of reasonable attorney's fees. See Amendment To Motion For Attorney Fees And Costs For Plaintiffs Gerry Plant And Issiah Ross, exh. K. Ms. Long's expenses are more properly considered overhead which is covered under the hourly rate plaintiffs' attorney charges. Therefore,

in accordance with the applicable law, plaintiffs' request for $ 1,875.00 as reimbursement for the services of Terri C. Long is DENIED.

Plaintiffs' request for payment for the services provided by two law students, Ray Brooks and Thomas Bond, and Cathy Hires, a paralegal, constitute a component of reasonable attorney's fees which a prevailing plaintiff is entitled to receive. Missouri v. Jenkins, 491 U.S. 274, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989); Riverside v. Rivera, 477 U.S. 561, 106 S. Ct. 2686, 91 L. Ed. 2d 466 (1986). A review of the hours submitted by each of those legal support staff individuals reveals reasonable hourly rates in line with the prevailing market rate in this area for comparable services. Law student Ray Brooks logged 292.75 hours at a rate of $ 25.00 per hour. Affidavit of Raymond Thomas Brooks In Support Plaintiffs' Motion For Attorney's Fees. Law student Thomas Bond logged 35 hours at a rate of $ 25.00 per hour. Amendment To Motion For Attorney Fees And Costs For Plaintiffs Gerry Plant And Issiah Ross, exh. M. Paralegal Cathy Hires logged 75 hours at a rate of $ 50.00 per hour. Id., exh. L. The hours presented also all represent hours

reasonably expended without the inclusion of any excessive, redundant or otherwise unnecessary hours in the amount claimed. The lodestar computations for the legal support staff, therefore, yields the amounts of: $ 7,318.75 (292.75 hours @ $ 25.00 per hour) for the services of law student Ray Brooks; $ 875.00 (35 hours @ $ 25.00 per hour) for the services of law student Thomas Bond; and $ 3,750.00 (75 hours @ $ 50.00 per hour) for the services of paralegal Cathy Hires.

The legal support staff's hours are also subject to the same twenty-five percent (25%) lodestar reduction applied to plaintiffs' attorney's hours since the legal staff similarly worked on the successful, as well as the unsuccessful, claims. Accordingly, plaintiffs are entitled to receive the following amount as compensation for legal support staff fees: $ 5,489.06 for the services of law student Ray Brooks; $ 656.25 for the services of law student Thomas Bond; and $ 2,812.50 for the services of paralegal Cathy Hires.

III. CONCLUSION

Based on the findings of fact and

conclusions of law made in Buckeye I and Buckeye II, the court hereby ORDERS that in accordance with the above stated rulings defendant pay damages to the prevailing plaintiffs totaling: $ 57,963.00 plus prejudgment interest and profit sharing benefits totaling 126.498 shares of Buckeye common stock, 3.572 shares of preferred stock, and $ 150.23 in cash to plaintiff Taylor; $ 17,510.00 in back pay plus prejudgment interest and profit sharing benefits totaling 47.146 shares of Buckeye common stock and $ 24.15 in cash to plaintiff Herring; $ 31,982.00 in back pay plus prejudgment interest and profit sharing benefits totaling 66.896 shares of Buckeye common stock, 1.388 shares of preferred stock, and $ 68.85 in cash to plaintiff Palms; $ 13,759.00 in back pay plus prejudgment interest and profit sharing benefits totaling 37.149 shares of Buckeye common stock and $ 19.09 in cash to plaintiff Homer; $ 23,760.00 in back pay plus prejudgment interest and profit sharing benefits totaling 85.100 shares of Buckeye common stock, 0.769 shares of preferred stock, and $ 63.37 in cash to plaintiff Plant (less a $ 1,000.00 deduction from Plant's profit sharing benefits); and $ 21,971.00 in back pay plus prejudgment interest and profit

sharing benefits totaling 54.410 shares of Buckeye common stock and $ 27.88 in cash to plaintiff Ross.

Defendant Buckeye is also ORDERED to pay a total of $ 175,794.10 in attorney's fees. n8

Lastly, the court RULES that all outstanding motions not addressed herein are made moot by this order and hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED, this 4 day of June, 1991.

APPENDIX

EXHIBIT A

TABITHA HERRING'S HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS EFFECTIVE DATE	PAY LEVEL	1980	EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES 10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
9/15/80	T-103	7.00	7.20			
12/8/80	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209		8.50			
	T-212					
	T-218					
	T-224					
6/13/83	T-230					*11.55
6/8/81	T-312		9.05	9.85		
			*Ms. Herring went from her pay point on Curve 3 to a pay point on Curve 2 that was higher in cents/ho			
12/7/81	T-318			10.60	11.30	
	T-324					
	T-330					
6/5/89	T-336					

ACTUAL PERSONAL ADJUSTMENTS EFFECTIVE DATE	PAY LEVEL	1980	EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES 6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
6/9/80	Hire Rate	6.50					
9/15/80	T-103	7.00					
12/8/80	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
3/9/81	T-209						
	T-212						

	T-218					
	T-224					
6/13/83	T-230		12.20	12.50	12.81	
6/8/81	T-312					
12/7/81	T-318					
	T-324					
	T-330					
6/5/89	T-336				14.19	14.59	15.17

Actual Wage Rates (Tabitha Herring)

	1983	1984	1985	1986	1987
January	11.30	11.55	12.20	12.20	12.50
February	11.30	11.55	12.20	12.20	12.50
March	11.30	11.55	12.20	12.20	12.50
April	11.30	11.55	12.20	12.20	12.50
May	11.30	11.55	12.20	12.20	12.50
June	11.55	11.55	12.20	12.20	12.50
July	11.55	12.20	12.20	12.20	12.50
August	11.55	12.20	12.20	12.20	12.50
September	11.55	12.20	12.20	12.20	12.50
October	11.55	12.20	12.20	12.50	12.50
November	11.55	12.20	12.20	12.50	12.50
December	11.55	12.20	12.20	12.50	12.50
Average	11.45	11.88	12.20	12.28	12.50
W-2 Earnings	$ 29,260	$ 29,540	$ 31,436	$ 32,242	$ 26,899
Equiv. Pd. Hrs.	2555	2487	2577	2626	2152

	1988	1989	1990	1991
January	12.50	12.81	14.59	15.17
February	12.50	12.81	14.59	15.17
March	12.50	12.81	14.59	15.17
April	12.50	12.81	14.59	15.17
May	12.50	12.81	14.59	
June	12.50	14.19	14.59	
July	12.50	14.19	15.17	
August	12.81	14.59	15.17	
September	12.81	14.59	15.17	
October	12.81	14.59	15.17	
November	12.81	14.59	15.17	
December	12.81	14.59	15.17	
Average	12.63	13.78	14.88	15.17

W-2 Earnings	$8,267	$30,165	$39,821	$12,931	
Equiv. Pd. Hrs. FDH (herring3) 5/8/91	655	2189	2676	852	

TABITHA HERRING'S "WHAT IF?" WAGE RATES (had she received same wage rates as Jerry Barry)

Jerry Barry's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES

PERSONAL ADJUSTMENTS EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
9/15/80	T-103	7.00	7.20			
12/8/80	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209		8.50			
	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312		9.05	9.85		
12/7/81	T-318			10.60		
6/7/82	T-324			10.95	11.65	
12/6/82	T-330				12.00	
6/6/83	T-336				12.15	12.80

Jerry Barry's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES

PERSONAL ADJUSTMENTS EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
6/9/80	Hire Rate	6.50					
9/15/80	T-103	7.00					
12/8/80	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
3/9/81	T-209						

	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312					
12/7/81	T-318					
6/7/82	T-324					
12/6/82	T-330					
6/6/83	T-336		13.55	13.85	14.19	14.59	15.17

TABITHA HERRING'S "WHAT IF?" WAGE RATES (had she received same wage rates as Jerry Barry)

Jerry Barry's history of wage rates (Curve 3)

	1983	1984	1985	1986	1987
January	12.00	12.80	13.55	13.55	13.85
February	12.00	12.80	13.55	13.55	13.85
March	12.00	12.80	13.55	13.55	13.85
April	12.00	12.80	13.55	13.55	13.85
May	12.00	12.80	13.55	13.55	13.85
June	12.80	12.80	13.55	13.55	13.85
July	12.80	13.55	13.55	13.55	13.85
August	12.80	13.55	13.55	13.55	13.85
September	12.80	13.55	13.55	13.55	13.85
October	12.80	13.55	13.55	13.85	13.85
November	12.80	13.55	13.55	13.85	13.85
December	12.80	13.55	13.55	13.85	13.85
Barry's Average Rate	12.47	13.18	13.55	13.63	13.85
Herrings's Equiv. Pd.	2555	2487	2577	2626	2152
Herring's "What If?"	$ 31,861	$ 32,779	$ 34,918	$ 35,792	$ 29,805
Herring's Actual	$ 29,260	$ 29,540	$ 31,436	$ 32,242	$ 26,899
Difference	$ 2,601	$ 3,239	$ 3,482	$ 3,550	$ 2,906

Jerry Barry's history of wage rates (Curve 3)

	1988	1989	1990	1991
January	13.85	14.19	14.59	15.17
February	13.85	14.19	14.59	15.17
March	13.85	14.19	14.59	15.17
April	13.85	14.19	14.59	15.17
May	13.85	14.19	14.59	
June	13.85	14.19	14.59	
July	13.85	14.19	15.17	
August	14.19	14.59	15.17	
September	13.85	14.19	15.17	
October	13.85	14.19	15.17	
November	13.85	14.19	15.17	
December	13.85	14.19	15.17	
Barry's Average Rate	13.99	14.36	14.88	15.17
Herring's Equiv. Pd.	655	2189	2676	852
Herring's "What If?"	$9,163	$31,434	$ 39,821	$ 12,931
Herring's Actual	$8,267	$30,165	$ 39,821	$ 12,931
Difference	$896	$1,269	$ 0	$ 0

FDH (herring3) 5/8/91

EXHIBIT B

JAMES HOMER'S HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
7/7/80	Hire Rate	6.50	6.50			
10/13/80	T-103		7.20			
1/5/81	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					

4/6/81	T-209		8.50	9.25		
	T-212					
	T-218					
	T-224					
	T-230					
7/6/81	T-312			9.85		
1/4/82	T-318			10.60	11.30	
7/5/82	T-324				11.65	
1/3/83	T-330				12.00	12.60
7/5/83	T-336					12.80
	T-424					
	T-430					
	T-436					
*4/4/88	T-442		*Actual qualification and promotion date.			

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
7/7/80	Hire Rate						
10/13/80	T-103						
1/5/81	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
4/6/81	T-209						
	T-212						
	T-218						
	T-224						
	T-230						
7/6/81	T-312						
1/4/82	T-318						
7/5/82	T-324						
1/3/83	T-330						
7/5/83	T-336		13.55	13.85			
	T-424						
	T-430						
	T-436						
*4/4/88	T-442			14.90	15.27	15.70	16.33

Actual Wage Rates (James Horner)

1983	1984	1985	1986	1987

January	12.00	12.80	13.55	13.55	13.85
February	12.00	12.80	13.55	13.55	13.85
March	12.00	12.80	13.55	13.55	13.85
April	12.00	12.80	13.55	13.55	13.85
May	12.00	12.80	13.55	13.55	13.85
June	12.60	12.80	13.55	13.55	13.85
July	12.80	13.55	13.55	13.55	13.85
August	12.80	13.55	13.55	13.55	13.85
September	12.80	13.55	13.55	13.55	13.85
October	12.80	13.55	13.55	13.85	13.85
November	12.80	13.55	13.55	13.85	13.85
December	12.80	13.55	13.55	13.85	13.85
Average	12.45	13.18	13.55	13.63	13.85
Actual W-2 Earnings	$ 32,138	$35,594	$ 36,597	$ 37,679	$ 39,186
Equiv. Pd. Hrs.	2581	2701	2701	2764	2829

	1988	1989	1990	1991
January	13.85	15.27	15.70	16.33
February	13.85	15.27	15.70	16.33
March	13.85	15.27	15.70	16.33
April	14.90	15.27	15.70	16.33
May	14.90	15.27	15.70	
June	14.90	15.27	15.70	
July	14.90	15.27	16.33	
August	15.27	15.70	16.33	
September	15.27	15.70	16.33	
October	15.27	15.70	16.33	
November	15.27	15.70	16.33	
December	15.27	15.70	16.33	
Average	14.79	15.45	16.02	16.33
Actual W-2 Earnings	$35,677	$36,823	$40,609	$14,404
Equiv. Pd. Hrs.	2412	2383	2535	882

FDH (homer3) 5/8/91

JAMES HOMER'S "WHAT IF?" WAGE RATES (had he received same wage rates as William Hogg and David Phelps)

PERSONAL ADJUSTMENTS			Hogg's and Phelp's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
9/15/80	T-103	7.00	7.20			
12/8/80	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209		8.50			
	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312		9.05	9.85		
12/7/81	T-318			10.60		
	T-324					
	T-330					
	T-336					
6/7/82	T-424			11.40	12.15	
12/6/82	T-430				12.75	13.40
9/5/83	T-436					13.70
3/5/84	T-442					13.85

PERSONAL ADJUSTMENTS			Hogg's and Phelp's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
6/9/80	Hire Rate	6.50					
9/15/80	T-103	7.00					
12/8/80	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
3/9/81	T-209						
	T-212						
	T-218						
	T-224						
	T-230						
6/8/81	T-312						

12/7/81	T-318					
	T-324					
	T-330					
	T-336					
6/7/82	T-424					
12/6/82	T-430					
9/5/83	T-436					
3/5/84	T-442	14.60	14.90	15.27	15.70	16.33

JAMES HOMER'S "WHAT IF" WAGE RATES (had he received same wage rates as William Hogg and David Phelps)
Hogg's and Phelps' history of wage rate (Curve 4)

	1983	1984	1985	1986	1987
January	12.75	13.70	14.60	14.60	14.90
February	12.75	13.70	14.60	14.60	14.90
March	12.75	13.85	14.60	14.60	14.90
April	12.75	13.85	14.60	14.60	14.90
May	12.75	13.85	14.60	14.60	14.90
June	13.40	13.85	14.60	14.60	14.90
July	13.40	14.60	14.60	14.60	14.90
August	13.40	14.60	14.60	14.60	14.90
September	13.70	14.60	14.60	14.60	14.90
October	13.70	14.60	14.60	14.90	14.90
November	13.70	14.60	14.60	14.90	14.90
December	13.70	14.60	14.60	14.90	14.90
Average	13.23	14.20	14.60	14.68	14.90
Equiv. Pd. Hrs.	2581	2701	2701	2764	2829
"What If?" Earnings	$ 34,147	$38,354	$ 39,435	$ 40,576	$42,152
Actual W-2 Earnings	$ 32,138	$35,594	$ 36,597	$ 37,679	$ 39,186
Difference	$ 2,009	$ 2,760	$ 2,838	$ 2,897	$ 2,966

	1988	1989	1990	1991
January	14.90	15.27	15.70	16.33
February	14.90	15.27	15.70	16.33
March	14.90	15.27	15.70	16.33
April	14.90	15.27	15.70	16.33
May	14.90	15.27	15.70	
June	14.90	15.27	15.70	
July	14.90	15.27	16.33	
August	15.27	15.70	16.33	
September	15.27	15.70	16.33	
October	15.27	15.70	16.33	
November	15.27	15.70	16.33	
December	15.27	15.70	16.33	
Average	15.05	15.45	16.02	16.33
Equiv. Pd. Hrs.	2412	2383	2535	882
"What If?" Earnings	$36,301	$36,823	$ 40,609	$ 14,404
Actual W-2 Earnings	$35,677	$36,823	$ 40,609	$ 14,404
Difference	$624	$ 0	$ 0	$ 0

FDH (homer3) 5/8/91

EXHIBIT C

JOHN TAYLOR'S HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
9/8/80	Hire Rate	6.50	6.50			
12/8/80	T-103		7.20			
3/2/81	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					

6/8/81	T-209	8.50	9.25		
9/7/81	T-212		9.50		
3/8/82	T-218		9.85	10.50	
9/6/82	T-224			10.80	
3/7/83	T-230			11.00	11.55
	T-312				
	T-318				
	T-324				
	T-330				
9/28/87	T-336				
	T-424				
	T-430				
	T-436				
5/7/90	T-442				

JOHN TAYLOR'S HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
9/8/80	Hire Rate	6.50					
12/8/80	T-103						
3/2/81	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
6/8/81	T-209						
9/7/81	T-212						
3/8/82	T-218						
9/6/82	T-224						
3/7/83	T-230		12.20	12.50			
	T-312						
	T-318						
	T-324						
	T-330						
9/28/87	T-336			13.85	14.19	14.59	
	T-424						
	T-430						
	T-436						
5/7/90	T-442					15.70	16.33

Actual Wage Rates (John Taylor)

	1983	1984	1985	1986	1987
January	10.80	11.55	12.20	12.20	12.50
February	10.80	11.55	12.20	12.20	12.50
March	11.00	11.55	12.20	12.20	12.50
April	11.00	11.55	12.20	12.20	12.50
May	11.00	11.55	12.20	12.20	12.50
June	11.55	11.55	12.20	12.20	12.50
July	11.55	12.20	12.20	12.20	12.50
August	11.55	12.20	12.20	12.20	12.50
September	11.55	12.20	12.20	12.20	12.50
October	11.55	12.20	12.20	12.50	13.85
November	11.55	12.20	12.20	12.50	13.85
December	11.55	12.20	12.20	12.50	13.85
Average	11.29	11.88	12.20	12.28	12.84
W-2 Earnings	$ 33,777	$ 30,084	$ 32,356	$ 33,777	$ 35,587
Equiv. Pd. Hrs.	2992	2532	2652	2751	2772

	1988	1989	1990	1991
January	13.85	14.19	14.59	16.33
February	13.85	14.19	14.59	16.33
March	13.85	14.19	14.59	16.33
April	13.85	14.19	14.59	16.33
May	13.85	14.19	15.70	
June	13.85	14.19	15.70	
July	13.85	14.19	16.33	
August	14.19	14.59	16.33	
September	14.19	14.59	16.33	
October	14.19	14.59	16.33	
November	14.19	14.59	16.33	
December	14.19	14.59	16.33	
Average	13.99	14.36	15.65	16.33
W-2 Earnings	$36,282	$38,167	$ 40,740	$ 15,471
Equiv. Pd. Hrs.	2593	2658	2603	947

FDH (taylor3) 5/8/91

JOHN TAYLOR'S "WHAT IF?" WAGE RATES (had he received same wage rates as Sonny Ard--and stayed on Curve 5)

PERSONAL ADJUSTMENTS			Sonny Ard's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
9/8/80	Hire Rate	6.50	6.50			
12/8/80	T-103		7.20			
3/2/81	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
6/15/81	T-209		8.50	9.25		
	T-212					
	T-218					
	T-224					
	T-230					
9/7/81	T-312			9.85		
3/8/82	T-318			10.60	11.30	
	T-324					
	T-330					
	T-336					
9/6/82	T-424				12.15	
3/7/83	T-430				12.75	13.40
9/5/83	T-536					14.00
3/5/84	T-542					14.55
9/3/84	T-548					

PERSONAL ADJUSTMENTS			Sonny Ard's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
9/8/80	Hire Rate	6.50					
12/8/80	T-103						
3/2/81	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
6/15/81	T-209						

	T-212					
	T-218					
	T-224					
	T-230					
9/7/81	T-312					
3/8/82	T-318					
	T-324					
	T-330					
	T-336					
9/6/82	T-424					
3/7/83	T-430					
9/5/83	T-586					
3/5/84	T-542	15.30				
9/3/84	T-548	15.75	16.05	16.45	16.91	17.59

JOHN TAYLOR'S "WHAT IF?" WAGE RATES (had he received same wage rates as Sonny Ard--and stayed on Curve 5)

Sonny Ard's history of wage rates (Curve 5)	1983	1984	1985	1986	1987
January	12.15	14.00	15.75	15.75	16.05
February	12.15	14.00	15.75	15.75	16.05
March	12.75	14.55	15.75	15.75	16.05
April	12.75	14.55	15.75	15.75	16.05
May	12.75	14.55	15.75	15.75	16.05
June	13.40	14.55	15.75	15.75	16.05
July	13.40	15.30	15.75	15.75	16.05
August	13.40	15.30	15.75	15.75	16.05
September	14.00	15.75	15.75	15.75	16.05
October	14.00	15.75	15.75	16.05	16.05
November	14.00	15.75	15.75	16.05	16.05
December	14.00	15.75	15.75	16.05	16.05
Ard's Average Rate	13.23	14.98	15.75	15.83	16.05
Taylor's Equiv. Pd. Hr	2992	2532	2652	2751	2772
Taylor's "What If?"	$ 39,584	$ 37,929	$ 41,769	$ 43,548	$44,491
Taylor's					

Actual	$ 33,777	$ 30,084	$ 32,356	$ 33,777	$ 35,587
Difference	$ 5,807	$ 7,845	$ 9,413	$ 9,771	$ 8,904

	1988	1989	1990	1991
January	16.05	16.45	16.91	17.59
February	16.05	16.45	16.91	17.59
March	16.05	16.45	16.91	17.59
April	16.05	16.45	16.91	17.59
May	16.05	16.45	16.91	
June	16.05	16.45	16.91	
July	16.05	16.45	17.59	
August	16.45	16.91	17.59	
September	16.45	16.91	17.59	
October	16.45	16.91	17.59	
November	16.45	16.91	17.59	
December	16.45	16.91	17.59	
Ard's Average Rate	16.22	16.64	17.25	17.59
Taylor's Equiv. Pd. Hr	2593	2658	2603	947
Taylor's "What If?"	$ $42,058	$44,229	44,902	$ 16,658
Taylor's Actual	$36,282	$38, 167	$ 40,740	$ 15,471
Difference	$5, 776	$6,062	$ 4,162	$ 1,187

FDH (taylor3) 5/8/91

EXHIBIT D Revised

JOHNNIE PALMS' HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
9/8/80	Hire Rate	6.50	6.50			
12/8/80	T-103		7.20			

3/2/81	T-106	7.85				
	T-109					
	T-112					
	T-118					
	T-124					
6/8/81	T-209	8.50	9.25			
	T-212					
	T-218					
	T-224					
	T-230					
9/7/81	T-312		9.85			
3/8/82	T-318		10.60	11.30		
9/6/82	T-324			11.65		
3/7/83	T-330			12.00	12.60	
9/3/83	T-336				12.80	
4/10/89	Tech 3					

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
9/8/80	Hire Rate						
12/8/80	T-103						
3/2/81	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
6/8/81	T-209						
	T-212						
	T-218						
	T-224						
	T-230						
9/7/81	T-312						
3/8/82	T-318						
9/6/82	T-324						
3/7/83	T-330						
9/3/83	T-336			*13.10	13.41		
4/10/89	Tech 3				14.19	14.59	15.17

* Mr. Palms had been "on hold"; his next pay increase would have been when the top pay point on Curve 2 exceeded $ 12.80. However, since the plant was about to adopt a new progression system, we chose to give the same $ .30/hr. increase as others received.

Actual Wage Rates (Johnnie Palms)

	1983	1984	1985	1986	1987
January	11.65	12.80	12.80	12.80	13.10
February	11.65	12.80	12.80	12.80	13.10
March	12.00	12.80	12.80	12.80	13.10
April	12.00	12.80	12.80	12.80	13.10
May	12.00	12.80	12.80	12.80	13.10
June	12.60	12.80	12.80	12.80	13.10
July	12.60	12.80	12.80	12.80	13.10
August	12.60	12.80	12.80	12.80	13.10
September	12.80	12.80	12.80	12.80	13.10
October	12.80	12.80	12.80	13.10	13.10
November	12.80	12.80	12.80	13.10	13.10
December	12.80	12.80	12.80	13.10	13.10
Average	12.36	12.80	12.80	12.88	13.10
Actual W-2 Earnings	$ 31,385	$ 33,107	$ 34,031	$ 34,241	$ 37,856
Equiv. Pd. Hrs.	2540	2586	2659	2659	2890

	1988	1989	1990	1991
January	13.10	13.41	14.59	15.17
February	13.10	13.41	14.59	15.17
March	13.10	13.41	14.59	15.17
April	13.10	13.41	14.59	15.17
May	13.10	13.41	14.59	
June	13.10	13.41	14.59	
July	13.10	13.41	15.17	
August	13.41	14.59	15.17	
September	13.41	14.59	15.17	
October	13.41	14.59	15.17	
November	13.41	14.59	15.17	
December	13.41	14.59	15.17	
Average	1323	14.16	14.89	15.17
Actual W-2 Earnings	$31,187	$34,065	$ 34,265	$ 14,432
Equiv. Pd. Hrs.	2357	2405	2303	951

FDH (palm3) 5/28/91

JOHNNIE PALMS' "WHAT IF?" WAGE RATES (had he received same wage rates as Joseph Willard Parker)

PERSONAL ADJUSTMENTS			Joseph Willard Parker's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
1/14/80	Hire Rate	6.63				
3/24/80	T-103	7.25				
4/14/80	T-106	8.00	8.05			
	T-109					
	T-112					
	T-118					
	T-124					
	T-209					
	T-212					
10/20/80	T-218		9.10	9.85		
	T-224					
	T-230					
	T-312					
7/13/81	T-318			10.60		
	T-324					
	T-330					
	T-336					
1/11/82	T-424			11.40	12.15	
7/12/82	T-430				12.75	
1/10/83	T-436				13.05	13.70
7/11/83	T-442					13.85

PERSONAL ADJUSTMENTS			Joseph Willard Parker's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	6/25/81	9/29/86	8/1/88 7/2/90	7/31/89
1/14/80	Hire Rate	6.63				
3/24/80	T-103	7.25				
4/14/80	T-106	8.00				
	T-109					
	T-112					
	T-118					
	T-124					
	T-209					
	T-212					
10/20/80	T-218					

	T-224					
	T-230					
	T-312					
7/13/81	T-318					
	T-324					
	T-330					
	T-336					
1/11/82	T-424					
7/12/82	T-430					
1/10/83	T-436					
7/11/83	T-442		14.60	14.90	15.25 16.33	15.70

JOHNNIE PALMS' "WHAT IF?" WAGE RATES (had he received same wage rates as Joseph Willard Parker)

J. Willard Parker's history of wage rates (Curve 4)

	1983	1984	1985	1986	1987
January	13.05	13.85	14.60	14.60	14.90
February	13.05	13.85	14.60	14.60	14.90
March	13.05	13.85	14.60	14.60	14.90
April	13.05	13.85	14.60	14.60	14.90
May	13.05	13.85	14.60	14.60	14.90
June	13.70	13.85	14.60	14.60	14.90
July	13.85	14.60	14.60	14.60	14.90
August	13.85	14.60	14.60	14.60	14.90
September	13.85	14.60	14.60	14.60	14.90
October	13.85	14.60	14.60	14.90	14.90
November	13.85	14.60	14.60	14.90	14.90
December	13.85	14.60	14.60	14.90	14.90
Parker's Average Rate	13.50	14.23	14.60	14.68	14.90
Palms' Equiv. Pd. Hrs.	2540	2586	2659	2659	2890
Palms' "What If?"	$ 34,290	$ 36,799	$ 38,821	$ 39,034	$ 43,061
Palms' Actual	$ 31,385	$ 33,107	$ 34,031	$ 34,241	$ 37,356
Difference	$ 2,905	$ 3,692	$ 4,790	$ 4,793	$ 5,205

	1988	1989	1990	1991
January	14.90	15.25	15.70	16.33
February	14.90	15.25	15.70	16.33
March	14.90	15.25	15.70	16.33
April	14.90	15.25	15.70	16.33
May	14.90	15.25	15.70	
June	14.90	15.25	15.70	
July	14.90	15.25	16.33	
August	15.25	15.70	16.33	
September	15.25	15.70	16.33	
October	15.25	15.70	16.33	
November	15.25	15.70	16.33	
December	15.25	15.70	16.33	
Parker's Average Rate	15.05	15.55	16.02	16.33
Palms' Equiv. Pd. Hrs.	2357	2405	2303	951
Palms' "What If?"	$35,473	$37.133	$ 36,894	$ 15,530
Palms' Actual	$31,187	$34,065	$ 34,265	$ 14,432
Difference	$4,286	$3,068	$ 2,629	$ 1,098

FDH (palms3) 5/28/91

Exhibit E

GERRY PLANT'S HISTORY OF WAGE RATES (actual)

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
9/15/90	T-103	7.00	7.20			
12/8/80	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209		8.50			

	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312		9.05	9.85		
12/7/81	T-318			10.60		
6/7/82	T-324			10.95	11.65	
12/6/82	T-330				12.00	
6/6/83	T-336				12.15	12.80
	T-424					
	T-430					
	T-436					
11/9/87	T-442					

ACTUAL PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89
6/9/80	Hire Rate	6.50				
9/15/90	T-103	7.00				
12/8/80	T-106					
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209					
	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312					
12/7/81	T-318					
6/7/82	T-324					
12/6/82	T-330					
6/6/83	T-336		13.55	13.85		
	T-424					
	T-430					
	T-436					
11/9/87	T-442			14.90	15.27	15.70*

*terminated 11/21/89

Actual Wage Rates (Gerry Plant)

	1983	1984	1985	1986	1987
January	12.00	12.80	13.55	13.55	13.85
February	12.00	12.80	13.55	13.55	13.85
March	12.00	12.80	13.55	13.55	13.85
April	12.00	12.80	13.55	13.55	13.85
May	12.00	12.80	13.55	13.55	13.85
June	12.80	12.80	13.55	13.55	13.85
July	12.80	13.55	13.55	13.55	13.85
August	12.80	13.55	13.55	13.55	13.85
September	12.80	13.55	13.55	13.55	13.85
October	12.80	13.55	13.55	13.85	13.85
November	12.80	13.55	13.55	13.85	14.90
December	12.80	13.55	13.55	13.85	14.90
Average	12.47	13.18	13.55	13.63	14.03
Actual W-2 Earnings	$ 33,826	$ 36,057	$ 40,077	$ 39,853	$ 43,640
Equiv. Pd. Hrs.	2713	2736	2958	2924	3110

FDH (plant3) 5/8/91

Actual Wage Rates (Gerry Plant)

	1988	1989
January	14.90	15.27
February	14.90	15.27
March	14.90	15.27
April	14.90	15.27
May 12.00	14.90	15.27
June	14.90	15.27
July	14.90	15.27
August	15.27	15.70
September	15.27	15.70
October	15.27	15.70
November	15.27	15.70
December	15.27	
Average	15.05	15.43
Actual W-2 Earnings	$ 38,699	$ 28,618

Equiv.
Pd. Hrs. 2571 1855

FDH (plant3) 5/8/91

GERRY PLANT'S "WHAT IF?" WAGE RATES (had he received same wage rates as Roy Peterson)

PERSONAL ADJUSTMENTS			Roy Peterson's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
12/3/79	Hire Rate	6.63				
3/3/80	T-103	7.25				
3/24/80	T-106	8.00				
9/8/80	T-109	9.00				
	T-112					
	T-209					
	T-212					
	T-218		9.10			
	T-224					
	T-230					
	T-312					
6/1/81	T-318		9.75	10.60		
	T-324					
	T-330					
	T-336					
11/30/81	T-424			11.40		
5/31/82	T-430			12.00	12.75	
11/29/82	T-436				13.35	
	T-442					
5/30/83	T-542				13.90	14.55
11/29/83	T-548					15.00

PERSONAL ADJUSTMENTS			Roy Peterson's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89
12/3/79	Hire Rate	6.63				
3/3/80	T-103	7.25				
3/24/80	T-106	8.00				
9/8/80	T-109	9.00				
	T-112					

	T-209					
	T-212					
	T-218					
	T-224					
	T-230					
	T-312					
6/1/81	T-318					
	T-324					
	T-330					
	T-336					
11/30/81	T-424					
5/31/82	T-430					
11/29/82	T-436					
	T-442					
5/30/83	T-542					
11/28/83	T-548		15.75	16.05	16.45	16.91

GERRY PLANT'S "WHAT IF?" WAGE RATES (had he received same wage rates as Roy Peterson)

Roy Peterson's history of wage rates (Curve 5)	1983	1984	1985	1986	1987
January	13.35	15.00	15.75	15.75	16.05
February	13.35	15.00	15.75	15.75	16.05
March	13.35	15.00	15.75	15.75	16.05
April	13.35	15.00	15.75	15.75	16.05
May	13.35	15.00	15.75	15.75	16.05
June	14.55	15.00	15.75	15.75	16.05
July	14.55	15.75	15.75	15.75	16.05
August	14.55	15.75	15.75	15.75	16.05
September	14.55	15.75	15.75	15.75	16.05
October	14.55	15.75	15.75	16.05	16.05
November	14.55	15.75	15.75	16.05	16.05
December	15.00	15.75	15.75	16.05	16.05
Average	14.09	15.38	15.75	15.83	16.05
Equiv. Pd. Hrs.	2713	2736	2958	2924	3110
"What If?" Earnings	$ 38,226	$ 42,080	$ 46,589	$ 46,287	$ 49,916
Actual W-2 Earnings	$ 33,826	$ 36,057	$ 40,077	$ 39,853	$ 43,640
Difference	$ 4,400	$ 6,023	$ 6,512	$ 6,434	$ 6,276

FDH (plant3) 5/8/91

Roy Peterson's history of wage rates (Curve 5)	1988	1989
January	16.05	16.45
February	16.05	16.45
March	16.05	16.45
April	16.05	16.45
May	16.05	16.45
June	16.05	16.45
July	16.05	16.45
August	16.45	16.91
September	16.45	16.91
October	16.45	16.91
November	16.45	16.91
December	16.45	
Average	16.22	16.62
Equiv. Pd. Hrs.	2571	1055

"What If?"		
Earnings	$ 41,702	$ 30,830
Actual W-2		
Earnings	$ 38,699	$ 28,618
Difference	$ 3,003	$ 2,212

FDH (plant3) 5/8/91

Exhibit F

IKE ROSS' WAGE RATES (had he remained employed on Curve 2 until resignation)

PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
10/6/80	T-103	7.00	7.20			
12/8/80	T-106		7.85			

3/9/81	T-109	8.05			
	T-112				
	T-118				
	T-124				
6/8/81	T-209	8.50	9.25		
9/7/81	T-212		9.50		
3/8/82	T-218		9.85	10.50	
9/6/82	T-224			10.80	
3/7/83	T-230			11.00	11.55

PERSONAL ADJUSTMENTS			EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	
6/9/80	Hire Rate	6.50				
10/6/80	T-103	7.00				
12/8/80	T-106					
3/9/81	T-109					
	T-112					
	T-118					
	T-124					
6/8/81	T-209					
9/7/81	T-212					
3/8/82	T-218					
9/6/82	T-224					
3/7/83	T-230		12.20	12.50	*12.81	

*resigned 7/31/89

IKE ROSS' WAGE RATES (had he remained employed on Curve 2 until resignation)

	1983	1984	1985	1986	1987
January	10.80	11.55	12.20	12.20	12.50
February	10.80	11.55	12.20	12.20	12.50
March	11.00	11.55	12.20	12.20	12.50
April	11.00	11.55	12.20	12.20	12.50
May	11.00	11.55	12.20	12.20	12.50
June	11.55	12.20	12.20	12.20	12.50
July	11.55	12.20	12.20	12.20	12.50
August	11.55	12.20	12.20	12.20	12.50
September	11.55	12.20	12.20	12.20	12.50
October	11.55	12.20	12.20	12.50	12.50
November	11.55	12.20	12.20	12.50	12.50
December	11.55	12.20	12.20	12.50	12.50
Average	11.29	11.93	12.20	12.28	12.50

Actual W-2 Earnings	$ 29,461	$ 29,834			
Equiv. Pd. Hrs.	2609	2501			

(NOTE: This information taken from second page--to calculate "Barry Equiv. Pd. Hrs.")

Barry W-2 Earnings	$ 36,495	$ 36,525	$ 37,632	
Barry Ave. Wage Rate	13.55	13.63	13.85	
Barry Equiv. Pd. Hrs.	2693	2680	2717	
Earnings (if Employed)	$ 32,859	$ 32,907	$ 33,964	

FDH (ross3) 5/8/91

	1988	1989	
January	12.50	12.81	
February	12.50	12.81	
March	12.50	12.81	
April	12.50	12.81	
May	12.50	12.81	
June	12.50	12.81	rehired 6/16/89
July	12.50	12.81	rehired 7/31/89
August	12.50		
September	12.50		
October	12.50		
November	12.50		
December	12.50		
Average	12.63	12.81	

(NOTE: This information taken from second page--to calculate "Barry Equiv. Pd. Hrs.")

Barry W-2 Earnings	$ 36,550	$ 21,199	$ 21,199 <--($36,341)(7/12)
Barry Ave. Wage Rate	13.99	14.19	
Barry Equiv. Pd. Hrs.	2613	1494	

Earnings (if Employed)	$ 32,997	$ 19,137

FDH (ross3) 5/8/91

IKE ROSS' "WHAT IF?" WAGE RATES (had he received same wage rates as Jerry Barry)

PERSONAL ADJUSTMENTS			Jerry Barry's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES			
EFFECTIVE DATE	PAY LEVEL	1980	10/6/80	6/15/81	6/7/82	6/13/83
6/9/80	Hire Rate	6.50				
9/15/80	T-103	7.00	7.20			
12/8/80	T-106		7.85			
	T-109					
	T-112					
	T-118					
	T-124					
3/9/81	T-209		8.50			
	T-212					
	T-218					
	T-224					
	T-230					
6/8/81	T-312		9.05	9.85		
12/7/81	T-318			10.60		
6/7/82	T-324			10.95	11.65	
12/6/82	T-330				12.00	
6/6/83	T-336				12.15	12.80

PERSONAL ADJUSTMENTS			Jerry Barry's history of wage rates: EFFECTIVE DATES OF GENERAL ADJUSTMENTS TO WAGE RATES				
EFFECTIVE DATE	PAY LEVEL	1980	6/25/84	9/29/86	8/1/88	7/31/89	7/2/90
6/9/80	Hire Rate	6.50					
9/15/80	T-103	7.00					
12/8/80	T-106						
	T-109						
	T-112						
	T-118						
	T-124						
3/9/81	T-209						
	T-212						
	T-218						
	T-224						

	T-230				
6/8/81	T-312				
12/7/81	T-318				
6/7/82	T-324				
12/6/82	T-330				
6/6/83	T-336	13.55	13.85	14.19 15.17	14.59

IKE ROSS' "WHAT IF?" WAGE RATES (had he received same wage rates as Jerry Barry)

Jerry Barry's history of wage rates (Curve 3)	1983	1984	1985	1986	1987
January	12.00	12.80	13.55	13.55	13.85
February	12.00	12.80	13.55	13.55	13.85
March	12.00	12.80	13.55	13.55	13.85
April	12.00	12.80	13.55	13.55	13.85
May	12.00	12.80	13.55	13.55	13.85
June	12.80	12.80	13.55	13.55	13.85
July	12.80	13.55	13.55	13.55	13.85
August	12.80	13.55	13.55	13.55	13.85
September	12.80	13.55	13.55	13.55	13.85
October	12.80	13.55	13.55	13.85	13.85
November	12.80	13.55	13.55	13.85	13.85
December	12.80	13.55	83.55	13.85	13.85
Barry's Average Rate	12.47	13.18	13.55	13.63	13.85
Barry's W-2 Earnings			$ 36,495	$ 36,525	$ 37,623
Ross' Equiv. Pd. Hrs.	2609	2501			
Ross' "What If?" Actual (if employed)	$ 32,534	$ 32,963	$ 36,495	$ 36,525	$ 37,632
Difference	$ 29,461	$ 29,834	$ 32,859	$ 32,907	$ 33,964
FDH (ross3) 5/8/91	$ 3,073	$ 3,129	$ 3,636	$ 3,618	$ 3,668

Jerry Barry's history of
wage rates
(Curve 3)

	1988	1989	
January	13.85	14.19	
February	13.85	14.19	
March	13.85	14.19	
April	13.85	14.19	
May	13.85	14.19	
June	13.85	14.19	
July	13.85	14.19	
August	14.19		
September	14.19		
October	14.19		
November	14.19		
December	14.19		
Barry's Average Rate	13.99	14.19	
Barry's W-2 Earnings	$ 36,550	$ 21,199	<--($36.341(7/12)
Ross' Equiv. Pd. Hrs.			
Ross' "What If?"	$ 36,550	$ 21,199	
Actual (if employed)	$ 32,997	$ 19,137	
Difference	$ 3,553	$ 2,062	

FDH (ross3) 5/8/91

EXHIBIT A-1

DOLLAR DIFFERENCES BETWEEN ACTUAL EARNINGS
AND "WHAT IF" EARNINGS

PLAN YEAR	HERRING 253-02-4219 DOE 6/9/80	TAYLOR 254-64-6537 DOE 9/8/80	PLANT 257-13-8776 DOE 6/9/80	ROSS 254-86-9910 DOE 6/9/80	PALMS 259-66-8361 DOE 9/8/80
1983	$ 634.25	$ 1,304.77	$ 872.79	$ 620.62	$ 823.61
1984	2,868.48	5,657.74	4,756.33	2,711.92	2,533.02
1985	3,105.24	8,149.82	5,553.48	3,232.08	4,259.52
1986	3,167.40	8,612.88	5,415.72	3,191.28	4,201.68

1987	3,017.40	8,218.80	5,419.44	3,042.84	4,180.44
1988	1,180.68	5,764.47	3,575.72	3,091.92	3,767.28
1989	1,476.80	5,042.62	2,471.07	3,021.64	3,835.81
1990	0.00	5,016.92	1,010.76	0.00	1,951.76
1991	0.00	2,434.80	0.00	0.00	2,381.60

PLAN YEAR	HOMER 255-76-7673 DOE 7/7/80
1983	$ 591.58
1984	2,144.66
1985	2,515.44
1986	2,510.76
1987	2,486.52
1988	1,828.89
1989	0.00
1990	0.00
1991	0.00

ADDITIONAL CONTRIBUTIONS WHICH WOULD HAVE BEEN MADE
BASED ON ADDITIONAL "WHAT IF" EARNINGS

Balance 5/15/91					
Cash	$ 24.15	$ 150.23	$ 63.37	$ 27.88	$ 68.85
Common Stock	47.146	126.498	85.100	54.410	66.896
Preferred Stock	0.000	3.572	0.769	0.000	1.388
Sub-Total Valuation	$ 3,905.21	$ 10,857.59	$ 7,132.11	$ 4,506.91	$ 5,689.99
Deduction			-1,000.00		
Total	$ 3,905.21	$ 10,857.59	$ 6,132.11	$ 4,506.91	$ 5,689.99

Balance 5/15/91	
Cash	$ 19.09
Common Stock	37.149

Preferred Stock	0.000
Sub-Total Valuation	$ 3,077.20
Deductions	
Total	$ 3,077.20

OPINION FOOTNOTES

n1

YEAR	BACK PAY AWARD
1983	$ 4,843
1984	7,845
1985	9,413
1986	9,771
1987	8,904
1988	5,776
1989	6,062
1990	4,162
1991	1,187
Subtotal	$ 57,963
Deduction	-0-
Total Back Pay Award	$ 57,963

n2

YEAR	BACK PAY AWARD
1983	$ 2,168
1984	3,239
1985	3,482
1986	3,550
1987	2,906
1988	896
1989	1,269
1990	-0-
1991	-0-
Subtotal	$ 17,510
Deduction	-0-
Total Back Pay Award	$ 17,510

n3

YEAR	BACK PAY AWARD
1983	$ 2,421
1984	3,692
1985	4,790
1986	4,793
1987	5,205
1988	4,286
1989	3,068
1990	2,629
1991	1,098
Subtotal	$ 31,982
Deduction	-0-
Total Back Pay Award	$ 31,982

n4

YEAR	BACK PAY AWARD
1983	$ 1,674
1984	2,760
1985	2,838
1986	2,897
1987	2,966
1988	624
1989	-0-
1990	-0-
1991	-0-
Subtotal	$ 13,759
Deduction	-0-
Total Back Pay Award	$ 13,759

n6

YEAR	BACK PAY AWARD
1983	$ 3,300
1984	6,023
1985	6,512
1986	6,434
1987	6,276
1988	3,003
1989	2,212
1990	-0-
1991	-0-

Subtotal	$ 33,760
Deduction	10,000
Total Back Pay Award	$ 23,760

n6

YEAR	BACK PAY AWARD
1983	$ 2,305
1984	3,129
1985	3,636
1986	3,618
1987	3,668
1988	3,553
1989	2,062
1990	-0-
1991	-0-
Subtotal	$ 21,971
Deduction	-0-
Total Back Pay Award	$ 21,971

n7 Section 1821 provides in relevant part:

(b) A witness shall be paid an attendance fee of $ 30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

n8

TOTAL ATTORNEY'S FEES

Attorney's fees and reasonable expenses:	$ 229,062.53
Legal support staff fees and reasonable expenses:	$ +8,957.81
SUBTOTAL:	$ 238,020.34
Less previously awarded interim attorney's fees:	$ -62,500.00
TOTAL	$ 175,520.34

APPENDIX E: DENIAL OF MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC

(FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 8, 1994, MIGUEL J. CORTEZ CLERK)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 89-8378, et al.

ISSIAH ROSS, JR., et al.,

Plaintiffs-Appellants,

versus

BUCKEYE CELLULOSE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Georgia

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ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC

Before: ANDERSON, Circuit Judge, HILL AND ESCHBACK*, Senior Circuit Judges.

PER CURIAM:

(x) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ R. LANIER ANDERSON

*Hon. Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

APPENDIX F

DO NOT PUBLISH

(FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 20,1994
MIGUEL J. CORTEZ
CLERK)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 93-8136

D.C. Docket No. CIV89-240-3-MAC

NANNETTE HILL TYSON; GEORGE EARNEST RUMPH,

Plaintiffs-Appellants,

versus

PROCTER AND GAMBLE CELLULOSE CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Georgia
(April 20, 1994)

Before KRAVITCH and BLACK, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

Appellants Tyson and Rumph, employees of Procter & Gamble, contend that certain of appellee Procter & Gamble's wage practices constitute wage discrimination violative of Title VII of the Civil Rights Act of 1964, as amended,42 U.S.C. Section 2000 et seq. For the reasons below, and based on our disposition of identical allegations in Ross v. Buckeye Cellulose Corp., 980 F.2d. 648 (11th Cir. 1993), we AFFIRM the district court's holding that appellants' claims are time-barred.

I.

Procter & Gamble Cellulose Corporation, formerly known as Buckeye Cellulose Corporation, is an Ohio corporation licensed to do business in the state of Georgia. Both appellants are black

Georgia residents employed at a paper-processing plant in Macon County, Georgia, owned by Procter & Gamble. For a complete description of this plant's operations, see Ross v. Buckeye Cellulose Corp., 733 F. Supp. 344, 347-48 (M.D. Ga. 1989), aff'd in part, 980 F.2d 649 (11th Cir. 1993).

Appellants contend that Procter & Gamble's method of setting wages at the plant, known as the "Pay and Progression System" (P & P System"), is racially discriminatory under Title VII. The sole issue on appeal is whether appellants' Title VII disparate impact claims are time-barred based on 42 U.S.C. Section 2000e-5(e)-1[1] and this court's analysis in Ross, 980 F.2d at 660 (rejecting as time-barred identical Title VII disparate impact claims brought by appellants' co-workers).

II.

In Ross, thirteen employees, including Tyson and Rumph, brought suit against Procter and Gamble alleging, inter alia, that the P & P System was operated in a racially discriminatory fashion. Tyson and Rumph pursued their claims in Ross

only under Section 1981, because they had not received the EEOC right to sue letter that is a prerequisite to bringing a Title VII claim.[2] Other plaintiffs in Ross, however, advanced claims pursuant to both 42 U.S.C. Section 1981 and Title VII.

This court held in Ross that the employees' Title VII disparate impact challenges to the P & P System were time-barred, because they were not brought within the 180 limitations period codified at 42 U.S.C. Section 2000e-5(e). 980 F2d at 660. In doing so, we held that the limitations period for such an action began to run in October 1984, the date on which the P & P System was frozen and thus the last possible date of wage discrimination under the System. Id.

In the present case, it is undisputed that appellants filed their charges with the EEOC more than180 days after the P & P System's wage freeze in October 1984. See Order of District court at 9 (Jan. 22, 1993). The district court therefore held that appellants' Title VII claims were time-barred under 42 U.S.C. Section 2000e-5(e)-1 and the analysis in Ross.

Appellants ask this court to reconsider

BEST AVAIL

our holding in Ross, insofar as Ross set October 1984 as the date activating the 180 days limitations period in which claimants might file EEOC charges challenging the System. Appellants contend that Ross is in conflict with Bazemore v. Friday, 478 U.S. 185 (1986).

We squarely rejected an identical argument in Ross. See 980 F.2d at 659 n.17. The doctrine of *stare decisis* binds us to our decision in Ross, "absent a countervailing decision by the Supreme Court or by this Court sitting en banc." Ransom v. S & S Food Center, Inc. of Florida, 700 f.2d 670, 674 (11th Cir. 1983). Because it is undisputed that appellants filed their EEOC charges beyond the 180 days limitations period, the district court's grant of summary judgment to Procter & Gamble is AFFIRMED.[3]

NOTES:

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[1]Title 42 U.S.C. Section 2000e-5(e)-1 requires an employee to file discrimination charges with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred." Disposition of such charges by the EEOC is a prerequisite to a Title VII

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action.

[2]Appellants eventually received their EEOC right to sue letters on April 25, 1989. The letters dismissed appellants' charges of discrimination based on lack of jurisdiction and noted that appellants had "filed a private lawsuit." As to appellants' Section 1981 claims, a jury returned a verdict for the defendant.

[3]We note that insofar as the complaint alleges Title VII violations arising out of distinct acts committed in 1989 and 1991 (see complaint pars. 18-20, 24-26), such claims are time-barred, no EEOC charges having been filed as to those asserted violations.